

# The London School of Economics and Political Science

Making It Work: The Development and Evolution of Transnational Labour Regulation

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## **Abstract**

Who has the capacity to regulate production in transnational supply chains and whose interests does this serve? This focus of this thesis is on transnational regulation, specifically the identification of the actors who participate in setting and implementing regulatory agendas, their interests, capacity and interactions between them.

Transnational regulation is the regulation of activities which take place across national jurisdictions. State and non-state actors are direct participants in transnational regulatory regimes and non-state actors may play leading roles in their development and implementation. While work has been done which examines the roles that non-state actors play in transnational regulatory processes, there has been limited investigation into the relationships between state and non-state actors on transnational standard setting and implementation.

The Governance Triangle, developed by Abbott and Snidal (2009) is a framework that positions the relationships between states, businesses and NGOs as central to transnational regulation. They argue that cooperation is necessary between these groups for there to be sufficient capacity to regulate a transnational problem. However, due to the divergent interests of these actors and the distribution of bargaining powers between them, they posit transnational regulatory standards are likely to be dominated by business interests and will be sub-optimal.

This thesis explores the question of whether transnational regulatory programmes dominated by business organizations are necessarily lacking regulatory capacity and whether they remain that way over time by studying the emergence and evolution of two cases of industry self-regulation designed to improve labour standards in the production of toys and chocolate.

Building upon the Governance Triangle, this thesis makes three key findings: 1) Bargaining in transnational regulation is not always distributional and that it is possible for actors to cooperate to identify and develop frameworks for transnational regulatory problems. 2) Interactions within one actor type and interactions involving all three actor groups can shape power dynamics in the bargaining process and 3) Regulation that is dominated by business actors does begin as sub-optimal. However, over time new bargaining processes can be initiated which lead to incremental developments in the capacity of a system to regulate.

This thesis also contributes to the literature on non-state actors in regulation by identifying the actors which participate in transnational regulatory processes and their motivation and capacity to do so. It identifies two new sources of regulatory capacity: individual policy entrepreneurs and the media.

## Contents

Chapter One: Context Setting .....	8
Introduction .....	8
Transnational Self- Regulation and the Emergence of Non -State Actors .....	10
Transnational Industry Self-Regulation: Defining the Actors .....	17
Business Actors .....	17
Multinational Corporations .....	17
Suppliers.....	19
Industry Associations .....	20
NGOs .....	22
State Actors in Transnational Regulation .....	24
Multilateral Organizations .....	24
Missing Actors.....	25
Methodology.....	28
Data.....	34
Chapter Two: Emergence of the ICTI CARE Process .....	38
Introduction .....	38
Organization of the Toy Industry .....	38
Issue Emergence .....	40
Nature of the Regulatory Problem.....	40
Boycott Campaign .....	41
Toy Coalition .....	45
Intervening Period .....	48
Mattel and Hasbro Implement Codes of Conduct .....	49
Working with the International Toy Council to promote and industry standard .....	50
Limited Adoption of the ICTI CARE Process .....	53
Industry Self-Regulation.....	54
Alan Hassenfeld and the ICTI CARE Process.....	54
Appealing to National Toy Associations and Retailers.....	56
Conclusion: Actors and their Interactions on the Governance Triangle.....	57
Chapter Three: Emergence of the Harkin Engel Protocol.....	63
Introduction .....	63
Organization of the Chocolate Industry.....	63
Issue Emergence .....	65
Political Instability in Côte d'Ivoire .....	65
Witch's Broom.....	67

Industry and State Coordination.....	68
Intervening Period .....	71
Trafficking and Child Slavery in West Africa: Linked to chocolate manufacturing by the media .	71
Etireno Incident and the Anti-slavery taskforce .....	74
Industry Self-Regulation.....	77
News reports about child slavery in the United States stimulates regulatory action .....	77
Tom Harkin offers alternative to statutory regulation .....	78
Negotiating the Harkin Engel Protocol .....	80
The Harkin Engel Protocol.....	83
Conclusion: Actors and their Interactions on the Governance Triangle.....	84
Chapter Four: Evolution of the ICTI CARE Process.....	89
Introduction .....	89
Organization of the CARE Process .....	90
Conflicts in the CARE Process.....	96
Information Gathering .....	96
Standard Setting.....	100
Behaviour Modification .....	102
Conflicts and Actor Positions .....	105
Conflict Management in the CARE Process .....	107
Information Gathering .....	107
Standard Setting.....	111
Behaviour Modification .....	113
Conclusion: Evolution of Bargaining in the ICTI CARE Process .....	117
Chapter Five: Evolution of the Harkin Engel Protocol .....	120
Introduction .....	120
Organization of the Harkin Engel Protocol .....	120
Conflicts in the Harkin Engel Protocol .....	129
Information Gathering .....	130
Standard Setting.....	136
Behaviour Modification .....	140
Conflict Management in the Harkin Engel Protocol .....	144
Information Gathering .....	145
Standard Setting.....	150
Behaviour Modification .....	150
Conclusion: Evolution of Bargaining in the Harkin Engel Protocol .....	153

Chapter Six: Developing and Implementing Transnational Regulation: Actors and their Interactions .....	155
Introduction .....	155
Distributive and Cooperative Bargaining in Transnational Regulation.....	156
Actor Dynamics: Intra-actor and Three-way Bargaining Processes .....	158
The Evolution of Bargaining in Transnational Regulation.....	160
Actors in Transnational Regulation.....	162
Multinational Companies.....	162
Suppliers.....	164
Industry Associations .....	165
NGOs .....	168
Unions .....	169
States .....	171
Multilateral Organizations .....	172
Missing Actors.....	173
Individual Policy Entrepreneurs .....	173
Media .....	175
Conclusion: Theoretical Contributions and Paths of Inquiry .....	179
Bibliography .....	183
Appendix 1: Interviews .....	192

## **Tables and Figures**

Table 1: Motivation and Capacity of State and Non-State Actors .....	27
Table 2 Organizations in the ICTI CARE Process.....	58
Table 3 Key Actors in the ICTI CARE Process.....	58
Table 1 Key Points of the Harkin Engel Protocol.....	84
Table 5 Organizations in the Harkin Engel Protocol .....	85
Table 6 Influential Actorrs in the Harkin Engel Protocol.....	86
Table 6: Organization of the ICTI CARE Process.....	94
Table 7 Conflicts in the ICTI CARE Process.....	106
Table 8 Adaptation of the ICTI CARE Process .....	116
Table 9: Organization of the Harkin Engel Protocol.....	127
Figure 1: GIG Certification Model .....	137
Table 10: Conflicts in the Harkin Engel Protocol.....	143
Table 11 Adaptation of the Harkin Engel Protocol .....	152
Table 12: Motivation, Capacity and Interactions between State and Non-State Actors.....	178

## Chapter One: Context Setting

### Introduction

Who has the capacity to regulate production in transnational supply chains and whose interests does this serve? This focus of this thesis is on transnational regulation, specifically the identification of the actors who participate in setting and implementing regulatory agendas, their interests, capacity and interactions between them.

Transnational regulation is the regulation of activities which take place across national jurisdictions.

The concept is relatively new and has gained prominence as a result of the growth of international trade regimes which began to accelerate in the 1990s.<sup>1</sup> The growth of international trade has introduced new types of social and environmental problems that often cannot be addressed by state regulation alone<sup>2</sup>. One example of such a problem is labour standards in transnational supply chains. This has emerged as an issue because workers from low-income countries who have entered global supply chains often do not have the same levels of protection for their health and welfare which are offered in developed countries, where multinational companies, who are the beneficiaries of this work, are based. Businesses have gradually accepted responsibility to address these types of problems and in the past two decades there has been an explosion of programmes developed by a range of state and non-state actors which are designed to regulate transnational production.

The sheer number of transnational regulatory schemes and the diversity of actors involved means that it is challenging to determine who controls them and what their interests and capacity are to do

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<sup>1</sup> This is documented in Abbott, K. W. and D. Snidal (2009). "The Governance Triangle: regulatory standards institutions and the shadow of the state." The politics of global regulation: 44-88.

<sup>2</sup> This can be due to legal reasons (ie. States do not have the authority to regulate outside of their jurisdictions), lack of political will, which has been detailed by Compa, L. (2002). "Pursuing international labour rights in US courts: New uses for old tools." Relations Industrielles/Industrial Relations **57**(1): 48-76. and Bartley, T. (2007). "Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions<sup>1</sup>." American Journal of Sociology **113**(2): 297-351. and the capacity constraints of governments in low-income countries as has been addressed by Amengual, M. (2008). Complementary Labor Regulation: The Uncoordinated Contribution of State and Private Regulators in the Dominican Republic. Annual Meetings of the Society of the Advancement of Socio-Economics. San Jose: 36..



so. While work has been done which examines these issues<sup>3</sup>, in particular in terms of the roles played by NGOs and businesses organizations in establishing transnational standards, it is an area which remains underexplored because there has been limited investigation into the relationships between state and non-state actors on transnational standard setting and implementation. The interactions between state and non-state actors has only recently been acknowledged as a critical aspect of the transnational regulatory process<sup>4</sup>.

The Governance Triangle, developed by Abbott and Snidal (2009) is a framework that positions the relationships between states, businesses and NGOs as central to transnational regulation because, in their view, cooperation is necessary between these groups for there to be sufficient capacity to regulate a transnational problem. However, due to the divergent interests of these actors and the distribution of bargaining powers between them, transnational regulatory standards are for the most part sub-optimal. As evidence, Abbott and Snidal (2009) point to the fact that most transnational regulatory programmes are dominated by business organizations, who have relative bargaining power but nonetheless lack some types of regulatory capacity. This observation leads to a puzzle: are regulatory schemes which are dominated by business organizations necessarily lacking regulatory capacity? If so, do they remain that way over time?

This thesis seeks to answer these questions and thus develop the Governance Triangle in three ways. Firstly, this this thesis focuses on two crucial empirical cases of transnational regulation: the ICTI CARE Process and the Harkin Engel Protocol, which are both forms of industry self-regulation designed to address labour standards in transnational supply chains. This allows greater scrutiny of

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<sup>3</sup> Some key works include Cutler, A. C., V. Haufler and T. Porter (1999). Private authority and international affairs, Suny Press, Cashore, B. W., G. Auld and D. Newsom (2004). Governing through markets: Forest certification and the emergence of non-state authority, Yale University Press. Sasser, E. N., A. Prakash, B. Cashore and G. Auld (2006). "Direct targeting as an NGO political strategy: Examining private authority regimes in the forestry sector." Business and Politics 8(3): 1-32. Florini, A. M. (2000). Third Force, The; The Rise of Transnational Civil Society, Carnegie Endowment, Vogel, D. (2008). "Private global business regulation." Annu. Rev. Polit. Sci. 11: 261-282. This work looks specifically at how non-state actors derive regulatory authority.

<sup>4</sup> For discussion see Risse, T. (2007). Transnational actors and world politics. Corporate ethics and corporate governance, Springer: 251-286..

bargaining in action, specifically in terms of identifying the actors who participate in industry-based forms of transnational regulation and their relationship to one another. Secondly, this thesis examines not only bargaining between different actor types but also within actor categories. While the Governance Triangle recognizes there is significant diversity of interest and capacity within each category, it views the relationships across different actor groups as the most consequential and so does not pay considerable attention to intra-actor bargaining dynamics, which are a crucial part of business-based forms of regulation<sup>5</sup>. Thirdly, this thesis examines the development of the ICTI CARE Process and the Harkin Engel Protocol over a period of ten years or more and so broadens the triangle to examine how bargaining evolves over time. In doing so, it addresses the question of whether industry-based systems of regulation respond to capacity problems.

This chapter sets the context for this thesis. It first sets the stage by discussing the development of transnational regulation as a mechanism to address transnational social and environmental problems. Secondly, it outlines the state of knowledge in respect to the identification of transnational regulatory actors and their interests and capacity to regulate. Thirdly, it situates the Governance Triangle within this work and discusses how this thesis builds upon this framework. Finally, this chapter outlines the methods used for this study.

## Transnational Self- Regulation and the Emergence of Non -State Actors

By definition, states do not have the same regulatory capacity in transnational settings that they have in domestic contexts because they cannot set or enforce rules on activities which take place in other countries. Although states may introduce rules that are intended to control transnational economic behavior through mechanisms such as mandatory self-reporting on overseas activities (as is the case with the Securities and Exchange Commission in the United States) or via government

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<sup>5</sup> An example on the relationship between brands and their suppliers comes from O'Rourke, D. (2003). "Outsourcing regulation: Analyzing nongovernmental systems of labor standards and monitoring." *Policy Studies Journal* **31**(1): 1-29..

procurement contracts (Jagers 2011), there is no legal basis for the United States or any other country to send labour inspectors to Bangladeshi clothing factories or to prosecute local operators for negligent management practices. Some authors such as Compa (2001) have argued that these types of mechanisms were purposefully left out of trade agreements because state obligations towards workers were deemed “too political” (Compa 2001p. 452) to be included as a formal component. Regardless, the ultimate result is that even the most powerful nation-states face limitations in terms of exercising regulatory authority in a transnational context.

Transnational market activity has nevertheless skyrocketed since the 1980s as barriers to trade have been removed and free trade agreements between countries have exploded. Between 1990 and 2014, inward global FDI flows have increased from 9%-34% of global GDP.<sup>6</sup> Likewise, the World Trade Organization reports it has been notified of 400 free trade agreements since the organization was established in 1995 whereas its predecessor, the General Agreement on Tariffs and Trade had only received 124 such notifications between 1948 and 1995.<sup>7</sup>

Workers who enter the global supply chain, particularly in low income countries, do not have the same levels of protection for their health and welfare that are offered in economically more developed states. The last two decades have borne witness to some of the worst factory disasters since the beginning of the twentieth century. A fire at the Kader toy factory in Thailand, which produced for western multinationals such as Fisher Price, Hasbro and Mattel in 1994 is recorded as the worst industrial fire in history, having claimed the lives of 188 workers. More recently, fires at apparel companies in Pakistan and Bangladesh in 2012 led to the deaths of over 350 workers. Over 1000 people were killed when Rana Plaza, a factory producing textiles for Western brands, collapsed (Van Voorhis 2013).

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<sup>6</sup>United Nations Conference for Trade and Development. (2014). "World Investment Report 2014, Annex Table 7." Retrieved March 4, 2015, from <http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Annex-Tables.aspx>.

<sup>7</sup> World Trade Organization. (2015). "Facts and Figures." Retrieved March 3, 2015, from [https://www.wto.org/english/tratop\\_e/region\\_e/regfac\\_e.htm](https://www.wto.org/english/tratop_e/region_e/regfac_e.htm).

These problems arise for multiple reasons including systematic repression of workers in exporting countries, who have precarious work contracts and are denied access to grievance mechanisms (Ross 1997, Chan 2001) and a lack of oversight capacity at production sites (Amengual 2008). Yet another factor leading to an overall decline in the conditions and quality of employment, is the mobility of capital, resulting in what is referred to as a “race to the bottom” in labour standards (Chan 2003, Gitterman 2004, Rosen 2005).

These types of events reveal “governance gaps”: issue areas that are introduced or exacerbated by international trade which states fail to regulate.<sup>8</sup> One response to these gaps has been more direct involvement in regulation by non-state actors. Bartley’s (2007) work has documented how NGOs turned to the promotion of private regulatory standards as a result of their failure to lobby for the integration of strong labour and environmental standards into multilateral trade frameworks. Indeed, NGOs and social movements have played an important role in shaping responses to major industrial failures by promoting voluntary self-regulation for business. They have done so through a variety of strategies, one being publicly shaming corporations through media exposes about the working conditions of their suppliers. One of the first multinational corporations targeted in this way was Nike, who after several years of facing NGO campaigns, adopted a code of conduct for its suppliers (Locke 2003). Events like this triggered a “cascade of codes” (Kolk and van Tulder 2005) where businesses adopted codes of conduct in a bid to avoid negative publicity.

The growth of codes of conduct has been accompanied by the development of other types of transnational regulation involving varying levels of participation by state, business and civil society actors<sup>9</sup> which has facilitated scholarly interest about their function in the international economy.

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<sup>8</sup> See for example Kobrin, S. J. (2008). "Globalization, transnational corporations and the future of global governance." Handbook of Research on Global Corporate Citizenship, Cheltenham: Edward Elgar, Quack, S. (2009). "Law, expertise and legitimacy in transnational economic governance: an introduction." Socio-Economic Review: mwp029.

<sup>9</sup> The Governance Triangle provides a succinct overview of the distribution of regulatory responsibilities. See Abbott, K. W. and D. Snidal (2009). "The Governance Triangle: regulatory standards institutions and the shadow of the state." The politics of global regulation: 44-88.

The focus of this work has primarily been on the role played by businesses and NGOs in establishing transnational standards.

Early work which examines the role of non-state actors in international affairs is focused on how they are able to adopt regulatory roles in the absence of state authority. This work characterizes international politics as a zero-sum game. Writers such as Ohmae (1995), Schmidt (1995), Strange (1996) discuss how the growth of multi-national companies in the latter half of the twentieth century undermine the capacity of national governments to regulate. Other authors such as (Keck and Sikkink 1999) Keck and Sikkink (1999) and Florini (2000) study how NGOs influence international decision-making. Florini (2000) argues NGOs have mobilized to seize an “ever-greater voice in how governments run countries and how corporations do business” (Florini 2000, p.5). These works have prompted debates about whether the ability of states to regulate has actually been compromised by the growing presence of NGOs and business organizations in international affairs. Drezner (2008) for example argues that “the great powers remain the primary actors writing the rules that regulate the global economy” (Drezner 2008 p. 5).

Subsequent work has however begun to recognize the interdependencies between state and non-state actors and there is increasing acknowledgement, if not focus on the relationships between state and non-state actors in developing and implementing transnational regulatory programmes. For example Risse (2007) argues “rather than analyzing transnational and interstate relations in zero-sum terms, it is more useful to study their interactions” (Risse 2007 p 251). Djelic and Sahlin-Andersson (2006) frame transnational regulation in terms of “regulatory fields” (Djelic and Sahlin-Andersson 2006p.1) to “make sense of the complex and dynamic topography of our re-ordering world” (Djelic and Sahlin Andersson 2006 p. 3). Work on “regime complexes” has furthermore been developed to examine the relationships between multi-lateral and other types of transnational regulatory frameworks (Keohane and Victor 2011, Orsini, Morin et al. 2013).

The Governance Triangle is a part of these attempts to conceive of transnational regulation as a set of complex relationships between different actor types. It sets up a framework to examine the relationship between state and non-state actors, specifically in the process of bargaining transnational environmental standards. The central tenets of the framework are that transnational regulation involves three principle actors: States, Firms and NGOs, who all seek to advance their own partisan interests. The Governance Triangle furthermore defines five regulatory tasks: Agenda-Setting, Negotiation, Implementation and Enforcement; and four associated competencies: Independence, Representativeness, Expertise and Organizational Capacity. No single actor on the triangle possesses all the necessary competencies to fulfil all regulatory tasks and so for regulation to serve the public interest coordination between the different actor types is essential. Negotiating transnational standards is however a form of distributional bargaining where actors can invoke two types of power: to go-it alone, or in other words pursue regulation without the cooperation of other actors and inclusion power, where actors are in a position to leverage their importance to a regulatory programme. Firms typically have better access to both types of power and so transnational regulatory standards tend to be sub-optimal because they can marginalize the role of other actors. Evidence for this is found in the way that transnational regulatory schemes are organized along the triangle: the majority of transnational regulatory programmes are dominated by business actors: the regulatory schemes depicted upon the Governance Triangle below which are positioned closer to firms in relative terms are considered to be more strongly controlled by business organizations.

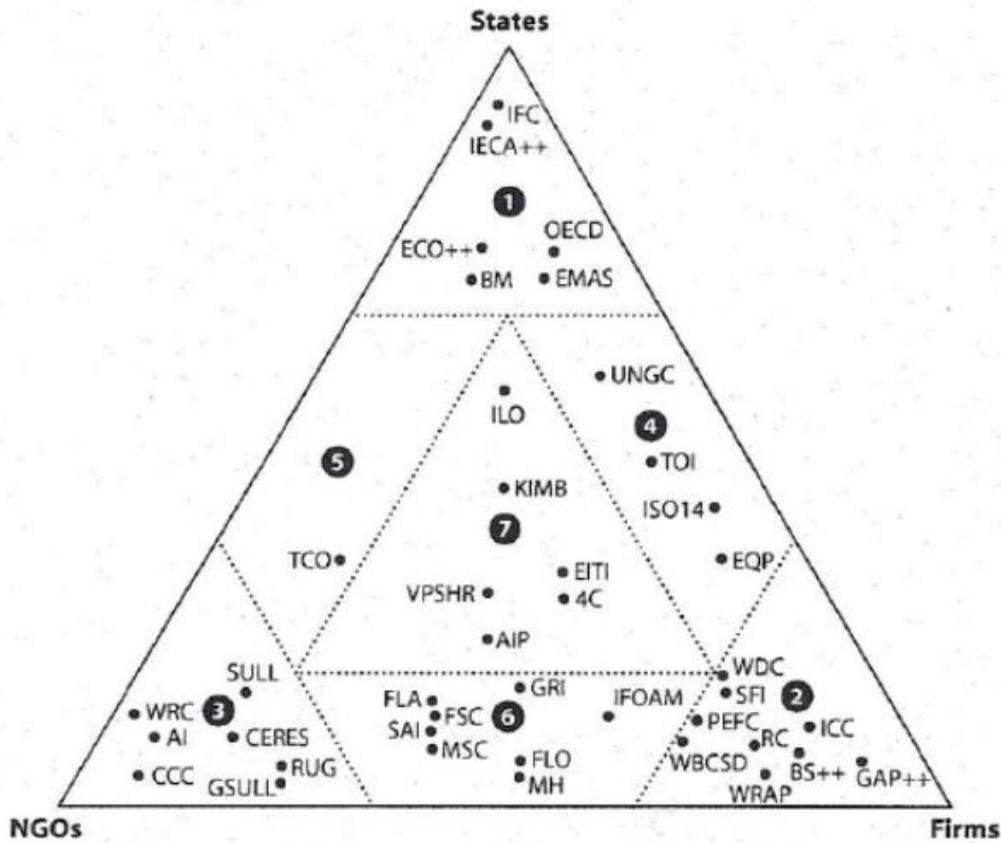


Fig. 1 The Governance Triangle, taken from *The Politics of Global Regulation*, Mattli and Woods eds (2009) p 50

While it may be a troubling conclusion that transnational regulatory bargaining favours business actors and thus limits how actors can coordinate in terms of their regulatory capacity, it also presents a puzzle. Are regulatory schemes which are dominated by business organizations necessarily lacking regulatory capacity? If so, do they remain that way over time?

The Governance Triangle does not address these questions. Its exploration of the actor categories it defines; Firms, NGOs and States, are very limited. They are very broad and cover a wide range of actors who do not necessarily share the same interests or types of capacity. While emphasizing the relationships between NGOs and businesses, the scheme does not consider how differences within actor categories play a role in bargaining and implementation of transnational regulatory standards. As O'Rourke (2003) and Locke (2013) have discussed in their work, the relationship between buyers and suppliers is consequential to how transnational regulatory schemes can be monitored and

enforced. Furthermore, while state organizations are recognized as substantive actors in the development of transnational regulatory standards, the Governance Triangle focuses mainly on two-way bargaining dynamics, between NGOs and business organizations, and does not go into detail about the role that states play in constraining or empowering other actors. Another limitation of the Governance Triangle is that it defines bargaining as a distributive process. This overlooks works such as Vogel and Kagan (2004) who show that different actor types may share a common interest in environmental standards, even when they have different motivations. Nor does it take into account the work of Ostrom (1990), which studies the way that private groups can successfully organize in response to shared environmental concerns, nor the work in the literature on industry self-regulation, which has identified ways that business groups work collectively to achieve common goals (Gunningham and Rees 1997). These works indicate that bargaining between non-state actors is not always a distributive process. Finally, the framework is designed to map transnational regulatory programmes at single points in time. It does not describe the actual process of developing and implementing transnational regulatory standards. This makes it hard use the Governance Triangle as a framework to make empirical observations observe of how power dynamics between actors apply to empirical settings. The Governance Triangle defines transnational regulatory activities and competencies however they are not straightforward to operationalize. For example, it is not clear how activities such as implementation, monitoring and enforcement are distinct from each other, or what activities they entail. The regulatory competencies defined by Abbott and Snidal (2009) can furthermore be politicized: expertise is for example a contested concept (Cutler 2009).

To answer the question of whether business-led transnational regulatory schemes necessarily lack capacity and whether this problem is addressed over time, it is thus important to take a deeper look at the range of actors which participate in the transnational regulatory process and to identify tools to study the process of transnational regulatory bargaining and its evolution. The next section of this chapter draws upon the regulatory literature and on the cases in this study to piece together a more detailed picture of the variety of interests and capacity within each actor group. It also identifies



actors which fall outside of the three actor groups defined by the Governance Triangle which may nevertheless play a role in the bargaining process. The final section discusses how it draws upon methods from the public policy and regulatory literature to examine the relationships of actors who participate in the regulatory process and how their various roles effects regulatory capacity and its evolution.

## Transnational Industry Self-Regulation: Defining the Actors

Because transnational regulation covers a broad range of issue areas and regulatory mechanisms there are a wide variety of actors who have been found to participate in it.<sup>10</sup> This thesis is focused specifically on the question on the role of business actors in industry dominated regulatory schemes. This section draws upon the regulatory literature and the actors which were identified in the course of studying the ICTI CARE Process and the Harkin Engel Protocol. It primarily uses the schema of the Governance Triangle to define the variety of actor types and their corresponding interests and capacity. However, some actors, including the media and individuals were identified over the course of study did not fit easily onto the Governance Triangle. These have been identified as “missing actors”.

### Business Actors

The business actors which have been identified in the regulatory literature and in the cases in this study include (1) multinational corporations, (2) small and medium enterprises and (3) industry associations. Each of these actor types serves a different function in the transnational regulatory process. However, there is still a high level of diversity within each which is explored in this thesis.

### Multinational Corporations

The motivation of multi-national companies to self-regulate is most often presented as a reputational concern. As the Nike case described in the first section illustrates, multinationals were

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<sup>10</sup> For overviews see Cutler, A. Claire, Virginia Haufler, and Tony Porter, eds. *Private authority and international affairs*. Suny Press, 1999 Hall, Rodney Bruce, and Thomas J. Biersteker, eds. *The emergence of private authority in global governance*. Vol. 85. Cambridge University Press, 2002., Djelic, Marie-Laure, and Kerstin Sahlin-Andersson, eds. *Transnational governance: Institutional dynamics of regulation*. Cambridge University Press, 2006., and Hale, Thomas, and David Held, eds. *Handbook of transnational governance*. Polity, 2011.

an early target for NGOs, which campaigned for improvements to worker welfare. Sustained NGO campaigns such as this have demonstrated the sensitivity of global brands to negative publicity and the extent to which they are ready to take action to protect their brand image (Haufler 2001, Locke, Amengual et al. 2009). Reputational concerns can also be a basis for collective action. Studies of industry-self regulation at the domestic level by Rees (1996) and Gunningham and Rees (1997) have found that business motivation is based on a shared sense of reputational necessity, called a “reputational commons”. The concept of a reputational commons has been used by other authors to explain the take-up and success (or lack thereof) of industry self-regulation, particularly in the management literature, such as studies of the chemical industry by King et al (2002), Barnett and King (2008), Yue and Ingram’s (2012) study of the New York Clearinghouse Association.

However, not all multinational companies are as visible as those which are in the consumer goods sector and not all attach the same level of significance to their brand reputations. In this respect, competition also drives business motivation to self-regulate. For example, Levy and Prakash (2003) document the case of Dupont, a chemical company which endorsed more stringent CFC regulation because it saw this part of its business as low-margin and had already begun to invest in alternatives. Hainemueller et al. (2011) also find that consumer demand grows for products that carry fair-trade labels. In this sense regulation can be seen as a way to spur innovation and access new markets.

Another source of motivation may also come from shareholders who pressure management to adopt voluntary forms of regulation (Brown and Woods 2007). However, in some cases such as Responsible Care, which was introduced after a major industrial accident in the chemical industry, voluntary regulation is used to pre-empt more stringent forms of statutory legislation (Gunningham and Rees 1997).

A substantial factor affecting the regulatory capacity of multinationals is their financial resources. When multinationals adopt self-regulatory programmes, this usually involves a commitment to devote resources to monitor producers to ensure they are complying with their sourcing

requirements. In low-income countries where state regulators face significant budgeting difficulties, these types of investments have been found to complement the work national business labour inspectorates (O'Rourke 2006, Amengual 2008).

A second type of regulatory capacity of multinationals is related to their position as dominant buyers in global supply chains. Research on global value chains has found that in commodity chains that are buyer-driven, that is dominated by a few buyers and a diffuse number of suppliers, multinationals have governance potential due their ability to control suppliers through procurement contracts (Gereffi and Korzeniewicz 1994). However, accounts of the poor outcomes from factory auditing such as those by Egels-Zandén (2007) and Locke (2013) suggest that the social parameters of procurement requirements alone do not translate into implementation.

Multinationals are in short believed to support self-regulation when there is a commercial interest to do so. Their commercial interests may be shared, particularly where reputation is concerned and may help to drive collective action. Multinational companies are furthermore believed to be powerful standard setters when they occupy dominant positions in the supply chain but they do not necessarily have the resources or capacity to play as significant roles in the implementation of standards as the burden to implement them falls upon their suppliers. The potentially collective nature of reputational motivation and the dependency of multinational companies on suppliers to implement regulation underscore that the relationships across multinational companies and other types of business actors is a critical component which drives their motivation and capacity to regulate.

### Suppliers

Suppliers to multinational companies are the organizations who are responsible for implementing regulatory standards. They play the most direct role in the health, safety and welfare of workers and are responsible for paying employees fairly, ensuring basic privileges and implementing health and safety procedures. Most often they are SMEs and types of small, informal organizations. For example, in the Changhai district of Guangdong, referred to as the “toy kingdom” of the world due

to its high volume of toy manufacturing, about 90% of manufacturers are small businesses (Want China Times 2015). In Côte d'Ivoire and Ghana, where over 70% of the world's cocoa is grown, there are over 1.5 million cocoa farms which are mainly small-scale and family-run (International Cocoa Initiative 2011).

Despite this substantial role, motivation of suppliers to improve labour standards is often fairly limited. Agreement to self-regulate is usually the result of contractual pressure from multinationals, but the burden of complying with voluntary schemes is not shared equally. As David Vogel puts it "for all of the widespread and widely believed rhetoric for CSR, many developing country producers regard the civil regulations imposed by western firms as a burden: meeting the requirements of western codes raises their costs, but does not increase the prices they receive"(Vogel 2009p. 186). In industries where margins for SMEs are low and competition is high, compliance to voluntary codes can therefore be perceived as a threat to business.

There is limited research on suppliers and their role in implementing transnational regulatory standards. If suppliers are considered as SMEs, the work of Hutter and Jones (2007), which studies self-regulation in the British food industry, may be relevant. They find that the capacity of SMEs to self-regulate is limited by a lack of knowledge, expertise and resources. This is a central issue impacting improvement of labour standards in transnational supply chains as standards are usually set and enforced by multinational companies for their smaller suppliers. However, it is not one that has received meaningful empirical attention: the Governance Triangle does not specifically reference SMEs, nor is there substantial work on their role in implementing transnational standards.

#### Industry Associations

Industry associations are trade bodies which serve the collective interests of a business sector. They may be regionally organized and thus focused on domestic or regional policy issues, such as the British Steel Association and its European counterpart, Eurofer. They may also be international organizations which are organized to address broader policy problems such as the Oil and Gas Climate Initiative. Most of the work on the role of industry associations and their role in regulation

has been at the domestic level. This work has identified ways in which industry associations demonstrate powerful regulatory capacity; in his work on industry self-regulation in the nuclear industry, Rees (1997) describes how the Institute of Nuclear Power Operators (INPO) established “communitarian” authority, meaning that businesses were motivated to comply with norms set by the industry association because it enabled them to participate in and identify with the broader industry community (Gunningham and Rees 1997). Prakash and Potoski (2007) have similarly described industry associations have the potential to provide “club” standards (Prakash and Potoski 2007). They argue that when businesses receive some type of benefit from membership to a club, such as improved reputation they are motivated to comply to voluntary norms. Gunningham and Rees (1997) have also pointed out how industry associations can develop administrative capacity, especially in terms of monitoring how its members are complying with standards (Gunningham and Rees 1997). Nevertheless, the capacity of industry associations to sanction members is varied and as Gunningham and Rees (1997) observe, often depends on whether the state actively supports self-regulation. Without an underlying threat of state sanctions, several authors have found that industry associations have limited capacity to actually enforce voluntary standards (Gunningham and Rees 1997, King and Lenox 2000). This problem is especially relevant in transnational regulatory environments, where state influence is more limited.

Another limitation of the regulatory capacity of industry associations is that they tend to be representative of the interests of larger businesses, either because smaller organizations do not have the resources to participate in meaningful ways, or because they are simply not members (Hutter and Jones 2007).

The motivations of industry associations to promote self-regulation may also be mixed as Gunningham (1995) has observed in his study of the Chemical Manufacturers Association (CMA) in the United States, the organization had the dual task of enforcing voluntary standards on health and safety while also lobbying for weaker legislation in Washington (Gunningham 1995).

While one may extrapolate from work carried out in domestic settings that industry associations can play an important role in transnational regulation, there is little work to date which examines their role.

## NGOs

In general, both NGOs and unions are considerably smaller than multinational companies they target. Even the largest NGOs such as Greenpeace and the World Wildlife Fund have operating budgets that are a fraction the size of a large multinational. They have considerably less resources to influence policy making through traditional lobbying channels and often lack technical business expertise, yet have been found to play a meaningful role in terms of changing corporate attitudes towards supply chain responsibility.<sup>11</sup>As Keck and Sikkink (1999) have argued in their work on transnational advocacy networks, NGOs in developed countries have been able to conduct successful campaigns against corporations based on research provided by NGOs in developing countries where labour standards or human rights violations are taking place. This coordinated approach to lobbying has enhanced the overall agenda-setting capacity of NGOs. Apart from influencing multinationals to self-regulate, NGOs have also influenced standards setting, either by working directly with firms to set up codes of conduct or introducing competing compliance systems which serve to strengthen business regulation (Hutter 2006, Bernstein and Cashore 2007, Overdevest 2010).

Ideological divisions between NGOs have materialized in the years since the first codes of conduct have been implemented. These divisions reflect tensions that can also be seen at the domestic level between organizations which work with business and those who are more hostile to them.<sup>12</sup> In rolling out regulatory programmes, business organizations have sought to co-opt NGOs in an effort

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<sup>11</sup> See for example Bartley, Tim. "Institutional emergence in an era of globalization: The rise of transnational private regulation of labor and environmental conditions." *American journal of sociology* 113.2 (2007): 297-351.)

<sup>12</sup> Sasser, Erika N., et al. "Direct targeting as an NGO political strategy: Examining private authority regimes in the forestry sector." *Business and Politics* 8.3 (2006): 1-32.

to bolster their legitimacy or make use of their capacity to reach marginalized groups (Arts 2002, Abbott and Snidal 2009). Some NGOs have taken a pragmatic approach and participate in business-sponsored programmes and may carry out activities from formulating standards, monitoring compliance and providing assistance and education to workers and communities that are affected by regulation (Arts 2002, Utting 2002, Linton 2005). The influence of NGOs in these arrangements is nonetheless understood to be fairly weak as businesses are unlikely to attach strategic priority to financing NGO activities that support regulation unless there is a considerable threat to their legitimacy (Abbott and Snidal 2009, Jamali and Keshishian 2009).

Other NGOs are fundamentally opposed to business self-regulation. For example Greenpeace has opposed business initiatives such as the United Nations Global Compact due to concerns that its enforcement mechanisms are too weak (Berliner and Prakash 2012). These NGOs believe that weak voluntary mechanisms are used mainly to protect the reputation of businesses but do not result in meaningful behavioural changes. They nevertheless continue to play a role in the broader regulatory arena through advocacy campaigns that critique weak regulatory schemes and promote more stringent alternatives (Jagers 2011).<sup>13</sup>

Finally, while this discussion has lumped unions together with NGOs, primarily because they often worked with NGOs or took on the same advocacy features as NGOs in the two cases studied, considering the nature of the cases, which centre on labour regulation, it is also worthwhile to consider them as distinct actors. The inaccessibility of workers in export-oriented countries to grievance and collective bargaining mechanisms is believed to be considerable hindrance for them to enjoy basic labour rights (Ross 1997, Chan 2001). Unions have also been in notable decline in a number of developed countries including the United States and the United Kingdom (Farber and Western 2001). The marginalization of collective bargaining raises the question of the role that

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<sup>13</sup> Hutter (2006) frames this according to a Regime Perspective as groups that are a part of the “context” of regulation. Hutter, B. (2006). *The Role of Non-State Actors in Regulation*. London, London School of Economics: 24.

unions play in transnational regulatory processes which focus on the improvement of labour standards.

The conflicting nature of the interests between NGOs which are more pragmatic and willing to coordinate with business organizations and those who are hostile may affect their bargaining dynamics. This relationship is explored in this thesis.

### State Actors in Transnational Regulation

While the Governance Triangle recognizes that states play a role in transnational regulation, it is a relatively vague about the nature of that role, indicating that states have “preferences of their own” which are determined “not only by their situations (e.g., level of development) and domestic constituencies, but also by other international concerns, such as trade and strategic interests.” (Abbot and Snidal 2009 p. 61). In other words, non-state actors regulate in “the shadow of the state” so regulatory activities carried out by non-state actors are influenced by state policy and preferences. For example, Polaski’s 2006 work on improving conditions at Cambodian textile factories, provides an example of how the United States Department of Labour (DoL) and the Cambodian government set goals on achieving better workplace standards which were tied to a bilateral tariff agreement, but monitoring compliance to the agreement was contracted out to third party organizations. Abbott and Snidal (2009) also point out that states can be a source of funding for transnational regulatory schemes; an example is the financial support provided by the Dutch government for the Global Reporting Initiative. It however unclear whether and how state preferences are integrated into transnational standards and whether states have capacity to play direct roles in implementing transnational regulation. The selection of the cases for this study, which include varying levels of participation by state actors helps to address this issue.

### Multilateral Organizations

According to Abbott and Snidal (2009), multilateral organizations are an example of a state organization. They describe multilateral organizations as value-based actors who must navigate different opinions of member states before taking a strong stand on a specific issue. However multi-



lateral organizations often have motivations and capacities that are distinct from state organizations. Barnett and Finnemore (2004) for example have argued they should be treated as independent from state actors because they exist not just for international cooperation, but also because they are bureaucracies, which have their own internal order and interests. The International Labour Organization has been a prominent global standard-setter and is the most relevant multilateral actor to the regulation of labour in transnational supply chains. Its core standards, which cover issues such as pay, discrimination, forced and child labour are the most widely used standards on workplace welfare in private business regulation today. Nevertheless, there is limited documentation of the ways in which the International Labour Organization has worked to advance these standards and the extent to which this has been done to facilitate international cooperation or to advance a specific organizational agenda.

### Missing Actors

Individual entrepreneurs have played significant roles in the cases; however they do not receive significant attention in the literature.

Since Kingdon (1984) wrote about policy entrepreneurs, who take advantage of opportune policy streams to advance a policy goal, individual entrepreneurs have been an area of focus in the public policy literature. However there is limited work to date which investigates whether or how individuals play significant roles in transnational regulatory processes. This is in spite of the fact that, owing to the low-costs and barriers of setting up transnational regulatory systems (Bartley 2007, Mattli and Woods 2009), it is a type of regulation that is ripe for entrepreneurship. Given the different institutional circumstances, this begs the question of whether the opportunities and behavior of policy entrepreneurs are the same in transnational contexts as they are in public policy contexts. The cases document how key individuals were involved in their evolution and emergence and their role will be evaluated against the public policy literature in the concluding chapter.

Another actor-type which is not well-represented on the Governance Triangle but appeared throughout both cases is the media. The media has played a role in stimulating regulatory responses from state and non-state actors by reporting on scandals. A number of authors have noted how NGOs have worked through the media to pressure companies to adopt or improve standards (Arts 2002, Alston 2005, Bernstein and Cashore 2007). However, less attention has been paid to the media as a non-state actor that is independent from NGOs. One exception is Hutter and Jones (2007), who examine the influence of the media on food safety practices in the United Kingdom and find that health and safety managers are concerned about negative publicity but at the same time had hostile attitudes towards what they considered to be hype, such as food scares. The role played by the media is documented throughout the empirical chapters and revisited in the conclusion.

**Table 1: Motivation and Capacity of State and Non-State Actors**

Organization Type		Motivation to regulate	Regulatory Capacity
Business	MNCs	Response to public demand	Resources, governance authority in supply chain
	Suppliers	Response to client demand (pressure from MNCs)	Direct oversight over problems, often lacking adequate regulatory capacity
	Industry Associations	Depends on mandate	Set norms, monitoring and administration, sanctioning capacity weak without state support
NGOs	“Pragmatic” NGOs	Varies but willing to support self-regulation	Role may depend on funding from business; set standards, monitor, outreach and education to affected communities
	“Adversarial” NGOs	Varies but critical of self-regulation	Campaign and oversight
	Unions	Interest-based	Grouped with NGOs
State	State Organizations	Varies	Standard setting, funding
	Multilateral Organizations	Depends on mandate	Standard setting, facilitate cooperation, negotiate between interests of member states
Undefined	Individuals	Varies	Unexplored
	Media	Described in relation to NGOs	Stimulates regulatory action but not treated as independent regulatory actor

This section has drawn from the regulatory literature and the cases in this study to identify the actor types which are likely to be found in industry-based forms of transnational regulation, and identifies their motivation and capacity for doing so. Table One summarizes these actors; the focus of the empirical work is drawing out more detail on the roles they play and will be revisited in the concluding chapter.

## Methodology

The central questions this thesis seeks to answer are whether regulatory schemes which are dominated by business organizations are necessarily lacking regulatory capacity, and if so, whether they remain that way over time. In answering these questions, this thesis seeks to build on Abbott and Snidal's (2009) Governance Triangle by exploring the transnational regulatory process in action. Due to the exploratory nature of this thesis and its emphasis on identifying actors and their relationships with one another, a case study approach was deemed the most suitable method of inquiry. A comparative two-case approach was chosen so that more than one set of actor relationships could be studied yet still allow for a deep exploration of each case.

Labour standards were chosen for the case studies because labour issues are fundamentally about conflicting interests: pitting the interests of capital against those of workers. It is thus far less likely for interests between different actors to converge as can happen in environmental regulation, where the business motivation to improve process standards is sometimes more obvious. That interests are more easily identifiable and conflict between actors is more likely, make the study of labour standards an accessible way to examine the interaction and power dynamics between competing interests along the Governance Triangle.

Industry self-regulation has been selected as the regulatory mechanism of study. This is a distinct form of transnational regulation in which businesses coordinate to meet regulatory goals. It is an industry-dominated form of regulation which involves multiple actors and therefore multiple interests and capacity. Multiple businesses participate in industry frameworks. As observed in the literature on industry self-regulation at the domestic (Gunningham and Rees 1997), it is also likely to involve participation by other actors, particularly the state, which is an actor that is relatively under-analyzed in the Governance Triangle.

Industry self-regulation often exists alongside other types of regulatory schemes. As such there is an element of competition in industry self-regulation as firms may choose to opt in or out of a

coordinated programme. The multiple actors involved in this form of transnational regulation helps to widen the net so to speak, to allow for the broadest possible exploration of the actor constellations and interactions along the Governance Triangle.

Two cases were chosen for this study, the ICTI CARE Process and the Harkin Engel Protocol. The ICTI CARE process regulates the toy industry, which operationally resembles the apparel and sporting goods sectors. These are sectors which have received a higher proportion of attention in the literature. The toy industry features large, broadly American buyers, who benefitted from the growth of free trade regimes to outsource production to low-cost locations. In the 1990s, production shifted to China, where regulatory standards were lax and, where, after a series of serious safety incidents, the industry came under pressure to self-regulate. The ICTI CARE Process follows a standard method of social certification, where independent monitors audit participating factories to assess whether they are meeting certification criteria and is an example of an industry-based regulatory programme which is mainly controlled by business actors.

The Harkin Engel Protocol on the other hand, is an agreement made by the chocolate industry with an American Senator. Cocoa production is far less mobile than with consumer goods and state actors play both a significant role in the cocoa economy. Cocoa is grown primarily on small-hold farms which are scattered across Ghana and Cote d'Ivoire. In this environment, traditional models of social certification are not practical to implement. The central participation of the state in this case helps to illuminate the ways that the preferences and capacity of state actors manifest themselves in transnational regulatory programmes; an issue which is currently under-explored by the Governance Triangle.

The difference between the nature of these two cases is of assistance in considering the extent to which frameworks such as the Governance Triangle are flexible enough to accommodate the variation that would be expected from the very different institutional make-up of transnational regulatory regimes. One constant across the two cases, however is the time frame as both cases

emerged through the 1990s and early 2000s, under an institutional backdrop of growing trade liberalization. This is the backdrop which spurred the development and growth of transnational regulation. It is the central point of focus of the Governance Triangle and facilitates greater cross-case comparison.

There are limits to the case study approach and to the design of this research. Importantly, this study does not claim to be explanatory in the same way as quantitative or experimental studies. While quantitative studies of industry self-regulation do exist: Lenox and Nash (2003) and Barnett and King (2008) use data from the Toxics Release Inventory (TRI), a database on waste management activities in the United States, to examine industry-self regulation in the American context, the purpose of this study is to explore relationships and processes. Furthermore, design of this study provides room to examine two different sets of actor relationships, it ignores many other types of transnational regulatory coordination, particularly those where other organizations, such as states or businesses may be more central. Consequently, while this study presents an analysis of actor relationships, it is not comprehensive.

Chapters two and three of this thesis examine the emergence of the ICTI CARE Process and the Harkin Engel Protocol; Chapters four and five examine the evolution of the two regulatory programmes. An inductive approach was utilized, meaning that the starting point was open-ended, so as to gather as much information as possible about the background and development of the regulatory process in each of the cases. Extensive interviews with many interested actors helped to identify key events gradually some patterns emerged.

The chapters covering the emergence of the ICTI CARE Process and the Harkin Engel Protocol make use of two analytical frameworks. The first framework is borrowed from Gereffi and Korzeniewicz's (1994) who developed the commodity chain approach to assess when the structure of a commodity chain provides conditions which allow for buyer-mandated self-regulation. This approach, which entails mapping the organization of the supply chain, particularly in terms of location, size and

capacity, was extremely helpful in terms of identifying the organizations which ultimately played a role in the two cases. Whereas the focus Gerreffi and Korzeniewicz's (1994) work is principally on direct participants in the supply chain, I also mapped the organization of peripheral organizations such as industry organizations.

The second framework draws on the public policy literature. The literature review showed that while significant media events were a catalyst in the development of both regulatory systems studied the issues addressed by industry self-regulation had already appeared in some form or another way earlier and there was some continuity in terms of the actors who were influencing these issues.

Another important finding which emerged was that industry self-regulation was one choice among many different regulatory mechanisms. It did not inevitably occur even after an issue had crystallized into one that might ultimately be regulated. Finally, while each case followed a distinct path, industry self-regulation only fully emerged once a critical mass of large multinational companies agreed to collectively self-regulate.

The survey of Parsons and Parsons (1995) on the policy cycle, which breaks up the policy process into stages was helpful in examining the emerging patterns. The policy cycle literature has a long history; Laswell (1951) identified policy-making as a sequence of intelligence, recommendation, prescription, invocation, application, appraisal and termination. Although different authors have proposed different labels and sequences, the policy cycle is broadly defined as a logical chain of actions (Bridgman and Davis 2003). A stagist approach to the policy cycle underlines there are distinct components of the policy process, each of which serve a specific purpose. While the actual descriptions of these stages as they were laid out in the policy cycle literature did not bear a resemblance to the cases in this study, there was considerable value to separating the development of the two cases into the stages which were identified. This assisted in identifying the continuity of the actors which participated in the cases, the way that their roles evolved and the way that they worked together to develop industry self-regulation.

Chapters two and three of this thesis examine the emergence of the ICTI CARE Process and Harkin Engel Protocol across three stages identified in the drafting process. These stages are:

1. **Issue Emergence** The point at which an issue is identified as a policy problem.
2. **Intervening Stage** The period in which different policy options are considered or tested.
3. **Industry Self-Regulation** The time at which industry self-regulation is introduced.

In breaking down the cases into stages, these chapters trace key events and important actors that ushered the process towards industry self-regulation. This approach provides deeper insight into the range of actors in the cases, their interests and capacity and their relationships with each other.

Chapters four and five study the evolution of the ICTI CARE Process and the Harkin Engel Protocol. The framework which is used to do this is a Regime Perspective developed by Hood, Rothstein et al. (2001). Hood, Rothstein et al (2001), define regulatory regimes as “the complex of institutional geography, rules, practices and animating ideas that are associated with the regulation of a particular risk or hazard” (Hood, Rothstein et al. 2001p. 9). They describe regulatory regimes as having three linked components: information gathering, which is the capacity to monitor compliance to the regime, standard setting, which is the ability to set rules, and behavior modification, which is the ability to change the behaviours of regime participants. These components are dynamically linked, meaning that a change in one component leads to changes in others. These changes are not necessarily productive; Hood et al describe them as toothpaste tube-like; pressure in one component of the regime leads to bulges in others. For example, higher standards may lead to more erroneous reporting.

Hood, Rothstein et al (2001) distinguish between regime content, which consists of the actual process of establishing and implementing regulation and regime context, which is the institutional backdrop in which regulation occurs. From Hood, Rothstein et al’s (2001) point of view, regime context is made up of lobby groups and the broader public opinion, however, in her work on non-



state actors in regulation, Hutter (2006) has noted that content and context are more difficult to distinguish due to the fact that organized groups may play a direct role in regulating. For this reason, the focus of this study is on regime content and not context.

What makes a Regime Perspective useful is that it is a flexible model that can be used to explore regulatory activities and their relationship to one another. By asking fairly open questions to interview participants which were focused on their roles or their opinions about rules, monitoring systems and sanctioning, discussions could stay focused and did not risk becoming un-necessarily technical. Furthermore, the notion that regulatory components are linked, is a concept that is missing from Abbott and Snidal's (2009) work on the Governance Triangle, but proved to be crucial in identifying the source of conflict in the cases, which is a point that is emphasized by their description of transnational bargaining as a distributive process. Similarly, because Chapters two and three address Agenda-Setting and Negotiation by looking at the emergence of the ICTI CARE Process and the Harkin Engel Protocol, Hood, Rothstein et. al's (2000) definition of the three regulatory components are at the same time more flexible and more specific than those defined by Abbott and Snidal (2009). Information gathering and behaviour modification imply a wider set of regulatory mechanisms than Monitoring and Enforcement, and a wide range of mechanisms were observed in the two cases.

Chapters four and five use a Regime Perspective in three ways to build on the Governance Triangle. The first maps how standard setting, information gathering and behavior modification activities are distributed across state and non-state actors. In conducting this mapping, it is possible to develop a more detailed picture of the organizations which participate in regulating and the extent to which they may be controlled by one actor or whether the implementation regulation is dependent on more actors. This helps to answer the first question asked by this thesis, of whether business dominated transnational regulatory schemes are necessarily sub-optimal.

The second way a Regime Perspective is used is to examine whether the regulatory components of the ICTI CARE Process and the Harkin Engel Protocol are dynamically linked. This is done by examining conflicts at each regulatory component in the two cases and helps to establish the orientation of different actors and how the conflicts between actors enables or undermines regulatory capacity. The final way a Regime Perspective is used is to look at the way conflicts were managed over time. This helps answer the second question asked by this thesis of whether business-dominated transnational regulatory systems remain sub-optimal or develop capacity over time.

## Data

In order to examine key events and actors which participated in the ICTI CARE Process and the Harkin Engel Protocol over a period of more than a decade, extensive effort was made to study documentary materials, conduct interviews and visit sites that were relevant to the cases. Initially, I reviewed all websites and newspaper articles which I could locate which contained material that referred to the two cases. I kept a record of the names of people and organizations who were associated the cases and got in touch by email or post to request face to face or telephone interviews. I used snowball tactics to get additional referrals. Casting a net this wide, I could get multiple perspectives about the respective cases and got a better understanding of how various organizations played direct or indirect roles in the cases. Interviews were semi-structured, I was interested in understanding what kind of role interview participants played in the regime, particularly in terms of regime development, standard setting, information gathering and behaviour modification. Eventually, in both cases this process led me to a small group of individuals or organizations who were at the heart of each initiative, often having played roles in the regulatory programmes from their inception. The central participants in each case included representatives from companies and staff from the organizations who administered the ICTI CARE Process and the Harkin Engel Protocol. At the time I conducted interviews, turnover within these organizations was not high and many of the people who had helped to set up the two regulatory programmes were

still involved. In general, they were very generous in their time and willingness to answer questions. Multiple interviews with these more critical participants, often in more informal settings, such as over dinner, or a drink. The informality was conducive to allowing participants to speak freely about their experiences and opinions.

In total, fifty-four participants were interviewed for this study. Forty participants were interviewed face-to-face and the remaining fourteen were contacted by telephone or by Skype.<sup>14</sup> Where possible interviews were recorded and transcribed but in some cases recording was not possible, either because interviews were in public spaces where there was too much background noise or because it was the interviewee stated a preference to speak without a voice recording. In these cases, extensive notes were taken and typed immediately after the interview. Interviews followed Chatham House Rules lasted between twenty minutes and four hours.

In total, there were twenty-three interviews conducted by participants representing individual business and industry organizations, thirteen with industry associations, eleven with NGOs, four with government representatives and three with universities. The relatively high proportion of people representing business who were interviewed reflects the nature of the cases I was studying, where business organizations were central. Business organizations and industry associations were broadly enthusiastic to participate in this study, however there were groups who were less accessible or willing to be interviewed. For the ICTI CARE case Chinese factory managers did not participate in interviews for language reasons and/or due to lack of response to interview requests. In the Harkin Engel Protocol, a civil war was under way in Côte d'Ivoire making responding to interview requests a low priority for most regime participants. These blind spots in the interview data mean that it is possible for selection bias to exist.

The main biases from the interview process stem from the disproportionate number of people who were representative of business and those that had English language skills. As such it was possible to

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<sup>14</sup> Appendix 1

make conclusions that placed too high an emphasis on the interests and perspectives of these actors. Key administrative roles were however primarily staffed by business organizations and regulation was predominantly conducted in English. The main perspectives which were not as strongly captured in this study were the targets of regulation: SMEs in China and family farms in Côte d'Ivoire and Ghana. I do not make assumptions about these interests and focus this study as much as possible on the administrative aspects of implementation, which is where I had most access. I also addressed this problem by attempting to do as much work "on the ground" as possible.

Regardless, seeing and experiencing the cases in action was central to this research and I visited all locations where there were formal operations to administer the regimes. This included site visits to China where I observed factory audits and had the assistance of a translator to speak with factory managers, travel to Geneva to spend two days with the International Cocoa Initiative, an organization formed as a part of the Harkin Engel Protocol, time spent in Washington to meet lobby groups and government officials involved in the Harkin Engel Protocol and travel to Ghana, where I met people involved with implemented the monitoring and educational programmes for the Harkin Engel Protocol. Through deeper participation and interaction in the institutional context where regulation was taking place I was able to get a better understanding of the types of resources that had been allocated to implementing the regimes as well as the range of individual capacity and commitment that were dedicated to them.

Interviews were triangulated with the documentary materials. Among this, Lexis Nexis searches using global English Language newspapers (syndicates such as the Associated Press were the most common sources) on the toy and chocolate industries were the most important. I carried out searches using both general terms such as "toy", "chocolate" and "labour" as well as more specific searches on events in each case. Searches dated from 1989-2011. Other important documentary materials included reports from NGOs, government and research organizations. In the case of the Harkin Engel Protocol, materials compiled by Tulane University, which had been awarded a contract

to monitor the performance of the Protocol from 2007-2011, was a very rich source of documentary materials. In the case of the ICTI CARE Process, the programme was also evaluated by the University of Mannheim in conjunction with an NGO in 2012, which also provided additional information. I have also benefitted from telephone discussions with Niklas Egels-Zandén, from the University of Gothenburg, who conducted research about the compliance of suppliers to Swedish toy brands to codes of conduct.<sup>15</sup>

Chapters two and three examine the emergence of the ICTI CARE Process and the Harkin Engel Protocol and maps the actors who participated in the development of these programmes. Chapters four and five look at the evolution of the ICTI CARE Process and the Harkin Engel Protocol using a Regime Perspective. Finally, the concluding chapter brings these chapters together to help to answer the question of the capacity of business-dominated transnational regulatory systems and how this evolves over time.

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<sup>15</sup> Egels-Zandén, N. (2007). "Suppliers' compliance with MNCs' codes of conduct: Behind the scenes at Chinese toy suppliers." Journal of Business Ethics **75**(1): 45-62, Egels-Zandén, N. (2014). "Revisiting supplier compliance with MNC codes of conduct: Recoupling policy and practice at Chinese toy suppliers." Journal of Business Ethics **119**(1): 59-75, Egels-Zandén, N. (2015). "Responsibility Boundaries in Global Value Chains: Supplier Audit Prioritizations and Moral Disengagement Among Swedish Firms." Journal of Business Ethics: 1-14.

## Chapter Two: Emergence of the ICTI CARE Process

### Introduction

This chapter examines the emergence of the ICTI CARE process within the framework of the Governance Triangle. The types of actors involved in the development of the ICTI CARE Process are identified and described in terms of interests and capabilities. The chapter goes on to examine how the different actors interacted to set up an industry-wide certification programme.

In order to capture the range of interests and capabilities within the industry itself, the chapter starts out by mapping the organization of the toy industry using a global commodity approach. The next part of the chapter breaks down the development of the ICTI CARE Process into three stages: 1) Issue Emergence, which is the period when the topic of health and safety in Chinese toy factories appeared as a salient issue for global toy brands; 2) Intervening Period, which is the stage in which different policy alternatives were considered to address the problem and 3) Industry Self-Regulation, the point at which the ICTI CARE Process became the dominant industry standard to regulate labour practices in Chinese toy factories. This analysis is useful to identify additional actors who played a role in shaping the ICTI CARE Process and to study interactions between industry and non-industry groups. The chapter concludes with a discussion of the significant actors who played a role in the development of the ICTI CARE Process and how they participated in the bargaining process.

### Organization of the Toy Industry

The toy industry is roughly divided in two types of businesses. The first is design and marketing (also referred to as toy brands), dominated by a small number of American, Japanese and European multinational companies. Among the leading global toy brands are Hasbro and Mattel. In 2014, these two corporations accounted for \$10 billion in revenues of the \$89 billion global toy market (Datamonitor 2015). The second component is manufacturing. This activity is predominantly carried out in Southern China by Hong Kong or Chinese-owned SMEs. It is estimated that there are about 4500 toy factories operating in China (Lin-Hi 2012). Other business actors in the toy industry include

equipment manufacturers, who license from brands and purchasing agents, who act as intermediaries between multinational companies and manufacturers. Large discount retailers are also influential business actors in the toy industry because they serve as significant clients to brands. For example, Mattel's three largest clients in 2014 were the retailing giants Wal-mart, Target and Toys R Us. Together, these three firms accounted for 35% of Mattel's sales (Datamonitor 2015).

At the international level, the industry is unified by the International Toy Council, an industry organization which was established in 1975. The potential for industry associations to play a regulatory function has been discussed by Rees and Gunningham (1997), Rees (1997) and Haufler (2001). The mandate of the International Toy Council is to coordinate on policy issues that affect trade. In fact, the origins of the International Toy Council are connected to efforts in the industry to harmonize safety standards in the United States and Europe (International Council of Toy Industries 2015). The International Toy Council is unique insofar as it convenes a broad range of industry actors. The members of the International Council include the national associations of all the world's major toy consuming and producing nations including the United States, Hong Kong and China.

Outsourcing has been a historical component of the toy industry. The modern toy industry emerged in the late 20<sup>th</sup> century in Germany, where sub-contracting manufacturing of component toy parts became a central feature of production (Hamlin 2007). Sub-contracting on a transnational basis emerged as early as the 1930s when American toy companies outsourced production to Japan due to its low cost of labour. This was a trend which gathered significant momentum in the 1950s (Cross and Smits 2005).

Production migrated to different countries in the Asia Pacific region as labour costs increased in conjunction with economic development (Johnson 2007). By the late 1970s Hong Kong had become the leading toy manufacturing centre in the world. In 1978 China introduced Special Economic Zones in Guangdong, a province adjacent to Hong Kong, to attract foreign investment. Hong Kong business owners immediately saw the benefits of manufacturing in China, where labour costs were lower and

quickly moved production across the border. By 1992, 90% of factory production in Hong Kong had migrated to Guangdong (1992) and by 1994, 80% of toy manufacturing was concentrated in China (Schrage 2004). Over the next decade, this figure increased to nearly 90% of global toy production (European Competitiveness and Sustainable Industrial Policy Consortium 2013).

The organization of the toy supply chain thus fits Gereffi and Korzeniewicz's (1994) description of a buyer-driven commodity chain, where a handful of large, predominantly American retailers and toy brands have purchasing power over a smaller and more dispersed set of toy manufacturers, which are mainly located in China. The supply chain is furthermore dynamic, with global production shifting according to changes in labour and production costs. This capacity for large buyers to quickly switch production from one country to another is suggestive of footloose capital, where states power to regulate is weakened vis a vis that of corporations (Strange 1996, Evans 1997).

## Issue Emergence

Health and safety emerged as issues for the toy industry following its transition to outsourcing from China's Special Economic Zones where basic labour laws were not enforced. This section describes the treacherous working conditions in Chinese factories and the obstacles to improving them through regulations. It traces how NGOs in the United States initially conflated working conditions in Chinese toy factories with un-related human rights violations by the Chinese government and how this led to an unsuccessful campaign against toy brands and retailers. It finally studies the Toy Coalition, a transnational NGO campaign organized as the direct result of two catastrophic fires at toy factories in Thailand and China and how this campaign worked with business groups to establish a Code of Conduct for the toy industry.

## Nature of the Regulatory Problem

From an early stage, workers in China's Special Economic Zones faced a difficult and unsafe work environment. Labour laws existed but were not enforced due to a combination of weak oversight



and high tolerance for bribery.<sup>16</sup> Workers were typically young female migrants with limited knowledge of their rights or confidence to exercise them (Chan 2001). Consequently, health, safety and other types of welfare breaches were met with limited resistance from the state or workers, leaving managers unaccountable.

Over time there was growing evidence that migrants who came to Guangdong were overworked, underpaid and exposed to serious health and safety risks<sup>17</sup>. A newspaper article published in Hong Kong in 1992 reports:

*"the special economic zones have become a lawless region...Chinese law has set eight-hour workdays but factory employees work from seven in the morning till 10:30 at night, seven days a week, 365 days a year. An official media report tells of women collapsing in exhaustion after working three consecutive days and nights to finish an order in a toy factory. The report said the workers had been locked in to prevent their escape."* (Sharma 1992)

### Boycott Campaign

The first campaign by NGOs which targeted American toy brands and retailers was the Boycott campaign. In the United States concerns about the treatment of Chinese workers were connected to its poor human rights record and the Boycott was organized by US-based unions and human rights organizations. The campaign was opportunistic and based on limited circumstantial evidence so businesses were easily able to dismiss it.

Trade relations between China and the United States became established with the passing of the 1974 Trade Act. Under the terms of the Act, Congress had to decide on an annual basis whether to offer "Most Favoured Nation"<sup>18</sup> trading rights to China, a designation which assures terms of trade are equal to all trade partners with that status. Until 1989, the designation was granted relatively routinely and without controversy based on the rationale that market reforms in China would

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<sup>16</sup>Data for period is not available. Interviews conducted in 2010 as well as published work on the Kader and Zhili fires emphasize these points. For example IC2 explained that only 1/180 toy factories in Guangdong had been visited by a labour inspector in 2010 and O'Leary, G. (1998). Adjusting to capitalism: Chinese workers and the state, ME Sharpe.

<sup>17</sup> For a broader discussion of working conditions in Chinese manufacturing see Chan, Anita. *China's Workers Under Assault: The Exploitation of Labor in a Globalizing Economy*. ME Sharpe, 2001.; Tsai, K. S. (2007). Capitalism without democracy: The private sector in contemporary China, Cornell University Press.; Ngai, P. (2005). Made in China: Women factory workers in a global workplace, Duke University Press..

<sup>18</sup> Also referred to as Permanent Normal Trade Relations

eventually lead to political reforms (Brick 1990, Tsai 2007). However when the Chinese military quashed the Tiananmen Square protests, a pro-democracy movement in China, advocacy groups sought for trade to be conditional on human rights (Suettinger 2004). This politicized the annual decision.

One of the organizations that became active internationally as a result of the Tiananmen Square Protests was the American Federation of Labor Organizations. A key concern of that organization was that China's suppression of human rights involved the widespread use of prison-labour camps, to make goods for export. As one representative from the union explained in 1990 "there are today 20 million prisoners in China who work for so-called manufacturing companies that are, in fact, the worst concentration camps in world history" (Hodel qtd.Brown 1990). According to the American Federation of Labor Organizations, the consequences of this were "that the massive Chinese prison labor system has destroyed American jobs in the shoe, toy, garment, textile, hand-tool and electronics industries at a minimum" (Fielder qtd.Southerland 1991).

In the aftermath of the Tiananmen protests, the American Federation of Labor Organizations launched the Boycott campaign over the 1989 Christmas shopping season. While the boycott of toys targeted industry, the main goal of the campaign, which was organized in cooperation with the Tibetan Rights Campaign, was to raise awareness about human rights issues in China and promote more restrictive trade policies in the United States to pressure China for more reforms. According to one of the campaign's organizers "Since there is no way to be certain if a product is made by prisoners, we make toys the target of our symbolic protest." (Jin qtd.Brown 1990).

A key claim of the Boycott campaign was that China used prison labour to manufacture goods for export. This claim was extrapolated largely from anecdotal evidence. Neither the American Federation of Labor Organizations nor its partners had undertaken any investigations to corroborate their assertions. They relied mainly on a 1991 episode of *60 Minutes*, an American investigative documentary programme, in which Harry Wu, a former Chinese political prisoner who had since

migrated to the United States and become a political activist, travelled to China posing as a businessman and recorded video evidence showing that political prisoners were producing products such as finished leather which were destined for the United States (Southerland 1991).

Designed to mobilize public support for restricting China's Most Favoured Nation trade status, the *60 Minutes* documentary also boosted the profile of the Boycott, which received the support of student groups from 500 of the largest universities in the United States as well as the Democracy for China Fund, an exile dissident group in the United States and the National Consumers League, a Washington-based advocacy organization. Consequently, unlike its earlier campaigns, the 1991 Boycott was carried out on a national basis and received national media attention.

The message of the Boycott campaign, which was already vague in 1989 became even more convoluted. The campaign's organizers represented many interests, who had different ideas about the focus of the Boycott. While the American Federation of Labor Organizations had spoken publicly against the use of prison labour in China, the National Consumers League advocated against child labour and Democracy for China promoted regime-change in China. Launching the Boycott in 1991, the leader of Frontlash, the American Federation of Labor Organizations youth movement explained:

*We know that prison labor and child labor exist in China, and because Tibetans are persecuted, for these reasons we don't want Americans buying toys from China" .*

An even more ominous sign for the campaign was that its claims had not been substantiated by anything other than the *60 Minutes* documentary and a few newspaper articles. As Debra Golodner, who represented the National Consumers League explained:

*Now, how do we know that children are working? How do we know that there are children making these toys? You know, it's very difficult working in child labor issues to really say, "this toy was made by a child and this toy was made by an adult." But the difficulty is that we know that there are some toys that are made by children. And so that the lethal combination is there in China right outside of Hong Kong. The Toy Manufacturers of American admit that \$1 billion worth of toys go through Hong Kong... Chinese Youth magazine reports that at least 44 out of 206 foreign investment or joint venture factories employ child workers, those under 16, and that this is particularly true in toy industries which are export-oriented. The Guangming Daily reported that*

*children make up nearly a quarter of the workers in Jiangxi Province alone. (Golodner 1991)*

The mixed goals of the organizers of the Boycott campaign and the absence of any credible proof of wrong doing in the toy business created a message that was unified only insofar as it was anti-China, a point which infuriated toy businesses. Warren Kwok, a Hong Kong industrialist described the Boycott as “totally unjustified and without foundation” (Kwok qtd. Bangsberg 1991). Toys R Us, the main target of the campaign rebutted that the Boycott was “misled by political activists seeking publicity at the expense of Toys R Us” (Chung 1991). Similarly, the American Toy Manufacturers Association<sup>19</sup> claimed:

*There are a lot of groups with axes to grind, but consumers are a lot more discerning about public relations tactics and hidden agendas. Nothing has happened; nobody even cares. Many things could be improved in China, but beating up on the toy industry is not going to help. (Frank 1992)*

Even labour organizations in Hong Kong expressed surprise at the tone of the Boycott and the weak evidence underpinning it. According to one Hong Kong-based labour unionist:

*"With so much publicity about child labor in the Third World, if you go to Washington and say Chinese imports are made in sweatshops manned by children, the general public are more inclined to believe rather than disbelieve you. But indications are the child labor problem in China is far less serious than in other Third World countries." (Sharma 1991)*

By the end of the 1991 Christmas shopping season, it was clear that the Boycott Campaign was ineffective. Consumer demand was unchanged and toy businesses were cynical about the claims against the industry. The Boycott furthermore did not lead to any changes in US policy towards China. Therefore, apart from some mixed media coverage, the Boycott could not claim any victories. As one reporter described it, the impact of the Boycott was “damage to the credibility of the U.S. human rights groups that launched this ill-researched, ill-defined campaign” (Child 1991). In summary, although significant labour abuses were taking place in Chinese toy factories, the organizers of the Boycott failed to identify them, seeking instead to align with human rights groups

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<sup>19</sup> Now called Toy Industry Association

which had competing goals. The result was that the Toycott was received cynically by the media and business and did not lead to any types of regulatory changes.

### Toy Coalition

In contrast to the Toycott campaign, the Toy Coalition was established by Asian labour organizations in response to disastrous factory fires in Thailand and China. It linked the local monitoring capabilities of Asian NGOs with the campaign capabilities of NGOs based in consumer countries. The Toy Coalition received more attention than the Toycott and either directly or indirectly, its promotion of a code of conduct were integrated into the policies of toy businesses and industry associations. The Toy Coalition was nevertheless not entirely successful in pursuing its agenda.

On May 10, 1993, the worst industrial fire in history took place on the outskirts of Bangkok. One hundred eighty-eight workers were killed and a further 469 were injured at a toy factory owned by Kader, a firm based in Hong Kong which produced merchandise for the American brands Hasbro, Toys R Us and Tyco. On November 19 of the same year, another fire broke out at a factory in Shenzhen which supplied an Italian brand, Chicco. This time, 87 workers perished and 47 were injured. The victims in both cases were predominantly young women earning less than a dollar a day (Symonds 1997, Asia Monitor Resource Center 2003, Haines 2005).

According to reports following the Kader and Zhili incidents, the damage caused by the fires was preventable. The factory buildings were poorly constructed. Flammable materials were stored inside which caused the fire to spread more easily (Gold 1993, Kemenade 1997). Managers had locked emergency exits to prevent employees using them to go on breaks. The only escape route available to them was to jump from windows which also proved to be fatal (Chua and Wong 1993).

Following the Kader and Zhili fires, Thai and Hong Kong- based NGOs met in Thailand to plan and discuss advocacy strategies that would help to improve conditions in toy factories. One of the outcomes of the meeting in Thailand was the creation of the Coalition for the Safe Production of Toys (Toy Coalition) which was a campaign to pressure multinationals to adopt the "Charter on the

Safe Production of Toys”, a code of conduct on health and safety that had been drafted by the campaign’s organizers (Varley 1998). The Toy Coalition was led by the Asia Monitor Resource Centre, a labour rights organization based in Hong Kong.

There were two central strategies to the Toy Coalition campaign. The first was that to seek the support of international NGOs including the World Development Movement (UK), the International Confederation of Free Trade Unions, the American Federation of Labor Organizations (US), Trocaire (Ireland), Workers Party (France), Asia Pacific Worker Solidarity Links, People’s Solidarity for Participatory Democracy (Korea), Japan Citizens Liaison Committee for the Safe Production of Toys (Japan), Indonesian groups and the Maquila Solidarity Network in Canada (Snyder 2002). These NGOs led local campaigns to pressure businesses to adopt codes of conduct modelled on the health and safety charter.

The second element of the campaign strategy was to have Asian NGOs including Asia Monitor Resource Centre and the Hong Kong Christian Industrial Committee continually monitor factories in the region and supply their international campaign partners with evidence of labour violations in supplier toy factories. This evidence was subsequently used to bolster international campaigns by demonstrating the extensiveness and seriousness of health and safety problems in toy supply chains. For example, a campaign led by Trocaire in Ireland to pressure toy brands to implement codes of conduct was launched in conjunction with a report published by the Asia Monitor Resource Centre which found that “people had been forced to work up to 16 hours a day, six or seven days a week for an average daily wage of £1.06... Workers complained of poorly ventilated and badly-lit factories causing breathing and skin problems, sore eyes and exhaustion” (Humphreys 1998).

Apart from the campaign, the 1993 factory fires catalysed Mattel and Hasbro, the two major American toy brands, and the American Toy Manufacturers Association to adopt internal codes of conduct in the same year. As one toy executive described, after the fires “there was a kind of mushrooming effect- the media, NGOs and Christmas. There were all sorts of reason to be

pressured” (IC1 2010). Another toy executive explained “the apparel and sporting goods industries were already developing codes of conduct, so the toy industry in the US at least felt serious pressure to show that it was doing something”(IC46 2010).

Although the large American toy brands responded to campaign and media pressure relatively quickly by developing codes of conduct, they were not so quick to take significant steps towards implementing the codes of conduct they had adopted. In the years after the Kader and Zhili fires, the Toy Coalition therefore focused its campaign on pressuring businesses to implement their codes. At this stage the campaign was met with more resistance by toy businesses which denied direct accountability for the mistreatment of workers at supplier factories. Writing in connection to the fires at Kader, David Miller, the President of the Toy Manufacturers Association claimed:

*The fire that swept through the Kader Industrial Toy Company near Bangkok was a catastrophe, but it was not the fault of the American companies that bought Kader's products.... Blame for what happened rests with the Thai managers who did not provide the exits and fire prevention machinery demanded by Thai law, not with the American companies that contracted with Kader Toys. (Miller 1994)*

Responding to reports by the Asia Monitor Resource Centre, the British Toy and Hobby Association likewise denied responsibility or wrong doing, claiming “We do not believe the situation is ever as gloomy as it's painted by the activists, what they want is not deliverable. It's not on. Anyway, these factories are private property.” (Hawtin qtd.Lloyd-Boystock 1996). Business organizations furthermore used the fact they had adopted codes as a defence against campaign pressure. For example, in response to an American Federation of Labor Organizations -led letter writing campaign in 1996, the Toy Manufacturer’s Association argued "We have our own code of conduct, and it's more than adequate." (Levin qtd.Haider 1996).

Led by the World Development Movement in the United Kingdom, the Toy Coalition nevertheless made inroads lobbying the British Toy and Hobby Association. In a campaign strategy which saw the World Development Movement concomitantly publicly attack the British Toy and Hobby Association

and its members for failures to improve working conditions at their supplier factories and work in consultation with the trade association to draft a code of conduct, the British Toy and Hobby Association announced that it had adopted its own code and had successfully promoted the code to International Toy Council in 1995 (Hawtin 1996). There was however tension between the World Development Movement, who advocated that an industry code should be enforced through independent monitoring, and industry groups which argued this was not necessary. When the British Toy and Hobby Association resolved to implement its code without an independent monitoring system, the World Development Movement consequently dismissed the code as insufficient. In a 1996 campaign Aditi Sharma, campaign officer for the World Development Movement argued:

*"One year on from adopting the code, toy manufacturers and retailers show no signs of enforcing it. They think they can job us off with the piece of paper, but it remains nothing more than a public relations exercise if they are not prepared to accept independent monitoring of conditions."* (Sharma qtd. Litherland 1996)

This ideological gap between members of the Toy Coalition, who believed the industry could not be responsible in policing itself, and industry organizations, who believed that the expectations of activist organizations were too radical for them to be included in a meaningful way in implementing a code of conduct, was irreconcilable. Consequently, although the Toy Coalition had played a significant role in drawing media attention to problems in toy supply chains and had successfully engaged the British Toy and Hobby Association, it did not possess the bargaining power to push beyond what industry organizations had defined as a reasonable response towards addressing health and safety concerns of workers in the toy industry.

## Intervening Period

The intervening period in the emergence of the CARE Process is one where the American multinationals Hasbro and Mattel started to initiate discussions to establish an industry-wide certification standard that would become the ICTI CARE Process. Although Hasbro and Mattel had successfully developed an industry-wide programme by working through the International Toy



Council, the programme was marginalized for several years and struggled to gain acceptance in the industry. Therefore, the intervening period in the case of the emergence of the ICTI CARE Process was one where an industry-wide programme was created but there was no certainty about whether it would be adopted by industry participants. This section describes how Mattel and Hasbro first implemented codes of conduct and explains why the two firms believed coordination was preferable. It then examines how the International Toy Council was used to develop an industry standard known as the ICTI Care Process and why toy companies did not initially adopt it.

#### Mattel and Hasbro Implement Codes of Conduct

Mattel and Hasbro began to comprehensively implement their respective codes of conduct codes in 1997. The narrative of Mattel is that it capitulated to ongoing media pressure, spearheaded by NGOs in the United States. As the largest toy brand in the world, Mattel was the main target of American campaigns. Local activist groups in Mexico, Thailand and China helped link the company to factory abuses such as confining workers, forcing them to work over-time and with-holding pay (Victoria International Development Education Association 2000). These scandals culminated in an investigative report aired by NBC Dateline which showed children assembling Barbie dolls at a factory in Indonesia. This incident reportedly pushed Mattel to retain Prakash Sethi, an American academic who had tracked business compliance to the Sullivan Principles, to help them implement their code of conduct (Sethi, Veral et al. 2011).<sup>20</sup>

While not a central target of consumer campaigns, Hasbro began to implement its own code of conduct at the same time as Mattel. With extensive supply chains that included factories which were owned by the two multinationals and many others which supplied to Hasbro and Mattel through intermediaries, or produced licensed goods over which neither company had any control, both firms focused on implementing their codes with key suppliers before applying their codes more broadly

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<sup>20</sup> There is some evidence that the company had already been monitoring factories that it owned before these incidents took place, however it is likely monitoring was not institutionalized - see Razzi, E. (1996). "Did Child Labor Make That Toy?" Kiplinger's Personal Finance Magazine 50(12): 5..

(Sethi 2003, IC12 2010). From a public-relations standpoint, this caused serious problems for both firms; no matter how well managed key factories were, activist groups continued to identify other poorly managed factories producing Mattel or Hasbro-branded toys. One year after Mattel announced the implementation of its code of conduct, it was still under fire from NGOs over “concerns that human rights abuses are continuing in the production facilities of the company's suppliers in China”(1998).

Implementing in-house codes of conduct beyond company-operated factories also posed logistical problems. Most toy factories had multiple clients; if each client imposed a different set of social standards, the result was unmanageable. This translated into redundant costs for factories who, as one toy executive explained “got audited 64 times based on small differences”(IC1 2010).

Therefore, while it was practical for brands to monitor key suppliers directly, it was far less practical to monitor and enforce an internal code of conduct with more distant suppliers.

#### [Working with the International Toy Council to promote and industry standard](#)

The International Toy Council had adopted the British Toy and Hobby Association code of conduct in 1995 but no action had been taken to implement the code by the industry because “it was so much time for people” (IC1 2010). However, after Mattel and Hasbro began to implement their own codes, the two major toy brands tabled the concept of a coordinated code at the Toy Manufacturers Association. Although the concept of an industry code was accepted by the American toy association it, “became clear that a wider range of stakeholders needed to be involved, particularly factories in China” (IC136 2010). Relationships between the factories operating in China and Americans were strained and Chinese factories expressed resistance to the social compliance programmes which had been created by the Americans. For example, in conducting an audit on behalf of Mattel, Sethi described an experience where he believed “local police were sent by someone to intimidate us” (Dee 2007). One NGO organization operating in Hong Kong described the American-led social compliance programmes as “arrogant” (IC40 2010). A major factor underlying these tensions was that the American toy brands were pressuring the Chinese suppliers on costs at

the same time as they were requiring them to establish expensive social compliance programmes. As David Vogel explained in a 2007 newspaper interview "suppliers have conflicting incentives, they want to reduce their costs because they have to keep prices low in order to hold onto the business, but at the same time they have to comply with the standards in order to hold onto the business" (Vogel qtd. Dee 2007).

Despite their general dislike of American social responsibility standards, larger Chinese manufacturers eventually came to support a harmonized programme because the existence of competing compliance standards was so costly to them. As one trade association member from Hong Kong explained, a universal code was "a remedy for the endless stream of factory checks demanded by buyers" (Young qtd. Oliver 2001)

With the support of the Chinese and Hong Kong toy associations who were members along with Mattel and Hasbro, the Toy Manufacturers Association agreed to bring the proposal to implement a coordinated code to the International Toy Council. Through this process factories operating in China could also be represented in the development of a coordinated programme.

The International Toy Council therefore once again acted as a vehicle to facilitate industry self-regulation by integrating the Hong Kong and Chinese toy associations into decision-making. With the additional membership of European toy associations, who were potential competitors to the Americans, all of the major participants in the toy industry were able to work through the International Toy Council to establish a programme that was in the industry's common interest.

In 1997 the International Toy Council formed a working group to develop a code of business conduct intended to replace the patchwork of codes and programmes that had developed in the industry.

Trade-offs were made to satisfy the interests of different national toy associations. For example, the European toy association wanted to include a universal provision, ILO on Convention 98, which guaranteed the freedom of association for workers. This was replaced by a weaker provision which stipulated that "all workers are entitled to freely exercise their rights of employee representation as

provided by local law” (ICTI CARE Foundation 2001) to accommodate the interests of the government-run Chinese toy association. The latter restricted union activity to the All-China Federation of Trade Unions, which was controlled by the government. The Europeans were willing to compromise because “the Chinese needed to be able to live with the code” (IC136 2010) in order for it to be implemented. Maximum working-hours requirements were also negotiated to a figure of 66 hours per week. Despite competing views that this number was too high, a settlement was reached on the basis that the figure was “realistic” to achieve (Biedermann 2006). Nevertheless, in most respects reaching an agreement on common standards for the industry was not that contentious. The most politicized issue, independent third-party monitoring, was not on the table. On most other matters, the differences between existing codes of conduct were marginal. As one toy executive explained the major challenges in developing the code boiled down to the logistical issue that there “are 22 associations that are a part of ICTI [the International Toy Council] and the body meets only once a year”(IC46 2010). Consequently, because the code’s development was consensus-driven, it took three years for the International Toy Council to finalize it and it was not formally announced until 2001 as the ICTI Code of Business Practices at the annual Hong Kong Toys and Games Fair.

Designing a framework to implement the industry code then fell back into the hands of Hasbro and Mattel, the two American firms who had been spearheading the industry initiative. On the basis they “had been doing the most work in the 1990s to implement a code” (IC123 2010) and therefore had the technical resources to set up an auditing procedure, the two industry giants were heavily involved in “bringing the Code of Business Practices to life” (IC1 2010), and over the next two years dominated work on an audit checklist that was intended to verify compliance to the code. The heavy dependence of the Americans to create the auditing process for the industry code was balanced by the creation of an international technical committee, made up of toy brands, manufacturers, licensors and retailers who were geographically distributed. Consequently, even though the Americans were dominant in the early development of the code, the structure of its long-term governance was inclusive of all International Toy Council member associations.

The other important way that the ICTI Code of Business Practices tried to be more inclusive was through founding of a secretariat, the ICTI CARE Foundation in Hong Kong. This body, was responsible for implementing the code. Two strategic hires were made to enhance the international legitimacy of the fledgling industry programme. The first was the President of the Foundation, a German toy executive and the second was the Head of Operations, an Australian executive. A central selection criterion for both new hires was that they were “not American” (IC2 2010) as the American backers of the ICTI CARE Process were especially concerned that the programme appeared legitimate in the eyes of factories which had the burden to implement it.

#### Limited Adoption of the ICTI CARE Process

A key task of the ICTI CARE Foundation was to operationalize the ICTI Code of Business Practices into a comprehensive compliance programme, the ICTI CARE Process. However, even though the Code had been agreed across all the International Toy Council’s member associations, the ICTI CARE Process had no mechanism to force companies to join the certification. In other words, membership in ICTI CARE was purely voluntary. Although the ICTI CARE Process could portray itself as a programme built with industry-wide endorsement, it still had to appeal to companies to sign up.

In its founding years, the ICTI CARE Foundation was limited by poor financing. The foundation had been provided seed money by some of the International Toy Council’s member toy associations but its medium term financial model was based on revenues from factories who paid for certification. Unfortunately, the seed money could not be stretched so far as to pay for the selection and training of independent auditors, which was the cornerstone of the ICTI CARE Process. Without a functioning audit system, the ICTI CARE Foundation was unable to attract companies to adopt the certification. Without revenue from these companies it did not have the funds to develop the audit system. Therefore, even though an industry-wide programme had been announced in 2001 and some steps had been made towards the development of an audit programme, in 2004 the ICTI CARE Process was still not recognized by the industry and large toy firms continued to pursue independent auditing programmes.

In summary, Hasbro and Mattel stimulated the introduction of an industry-wide certification system after both companies had implemented their own codes of conduct and found that coordination would be more beneficial. The International Toy Council played an important role in facilitating acceptance of the development of an industry-wide system. However, the industry giants, Mattel and Hasbro continued to play the leading roles in the technical development of the certification system. Despite the work which had been done, by 2004 the industry still lacked a functioning regulatory programme.

## Industry Self-Regulation

The ICTI CARE Process became the dominant industry standard only after Hasbro CEO Alan Hassenfeld intervened directly to promote wider business adoption of the Process and began to lobby his peers to support the code and. This section describes the actions he took. It also examines how promotion of the ICTI CARE Process through national toy associations and retailers contributed to the development of the ICTI CARE Process into industry self-regulation.

### Alan Hassenfeld and the ICTI CARE Process

As CEO of Hasbro, Alan Hassenfeld was one of the original supporters of the ICTI CARE Process and a strong public advocate of industry self-regulation. As one toy executive described, Hassenfeld saw the ICTI CARE Process as a way to “protect the industry from itself” (IC123 2010). Speaking publicly in 2005, he argued “implementing the code is not an idealistic dream. This is a reality, and it's a black mark on the industry if we don't begin to govern ourselves in an ethical, humane and proper way.” (Hassenfeld qtd.Castleman 2005). Similarly, while promoting the ICTI CARE Process at the Hong Kong Toys and Games Fair in 2005, Hassenfeld claimed: “anyone in the industry who thinks they are lily-white is living in a dream world. None of us, whether we like it or not, are innocent” (Hassenfeld qtd.Shih 2005).

In addition to his early support for the ICTI CARE Process, Hassenfeld had a track record of corporate activism focused on improving the lives of children, particularly in making large donations to support pediatric health (Hassenfeld Child Health Institute 2016). In this respect, Hassenfeld appeared to

have a personal interest in some of the issues (such as child labour and health and safety), which the ICTI CARE Process addressed.

Seeing the ICTI CARE Process was failing, Hassenfeld intervened, leveraging his resources, authority and industry networks to develop and implement it. He worked with the President of ICTI CARE to develop a financial plan which would provide it with enough resources to implement the audit programme. In collaboration with the International Council of Toy Industries, whose headquarters were in New York, he helped to create the charitable foundation in the United States which could accept donations for the ICTI CARE Foundation in Hong Kong. He established a governance board for the CARE Process, composed of “industry statesmen” who could promote ICTI CARE and also included representation from civil society organizations. Hassenfeld himself served as Chairman of the board of the Foundation.

Once the charitable foundation was set up and the Board constituted, Hassenfeld made a personal donation to the Foundation of \$100,000.00. He then approached other industry leaders for their support. One person interviewed recalled that Hassenfeld would call his peers and suppliers saying “I have just put in my own money, where is yours?” (IC1 2010). In the role of spokesperson for the CARE Process, Hassenfeld went on an international roadshow to shore up cash and support for the CARE Process. Early on, he succeeded in obtaining commitments of \$300,000.00 from the BTHA and \$600,000.00 from the Hong Kong Toy Association. This was followed by financial support from other International Toy Council member associations including the American Toy Association.<sup>21</sup>

To encourage other toy brands to follow suit, Hassenfeld announced that Hasbro would migrate its in-house monitoring system to ICTI CARE in 2004. This move was not without controversy. According to one newspaper report, Mattel competed on the stringency of their in-house code of conduct,

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<sup>21</sup> Castleman, L. (2005). Toy council pushes transparency and self-sufficiency for CARE. [Kidscreen](#). United States, Brunico Communications.

which unlike the ICTI CARE Process, included oversight by Prakash Sethi, who was an independent third party:

*CARE [is] a clumsy acronym ("Caring, Awareness, Responsible, Ethical") that reeks of P.R. consciousness. The code is similar to Mattel's but is not nearly as tough, largely because, says Sethi, it lacks what he considers the most crucial element -- a strong, transparent, third-party monitoring program. Alan Hassenfeld, the chairman of Hasbro and the co-chairman of the ICTI CARE foundation, called for a one-code approach in remarks at a Columbia Business School forum last spring that seemed directed at Mattel, offering a somewhat tin-eared anecdote about a Chinese factory that moved the fire extinguishers six inches up and down the walls depending on who was monitoring its conditions that week -- as if the real hardship inside these factories was an excess of bureaucracy.(Dee 2007)*

Although this author suggests Mattel was reluctant to adopt the ICTI CARE Process on the basis that it was weak, others closer to the certification programme denied such a rivalry between Mattel and Hasbro existed. There were nevertheless costs associated with migrating in-house codes to the ICTI CARE Process. In addition to administrative costs, toy brands had to assure that their key suppliers could comply with the standards and would need to be prepared to release them if they could not earn an ICTI CARE certification. Consequently, the adoption of the ICTI CARE Process by toy brands was often gradual. The ICTI CARE Foundation made allowances for this by setting up the Date Certain Process, a commitment on the part of toy brands that they would purchase from only ICTI CARE certified factories by a specified future date.

#### Appealing to National Toy Associations and Retailers

Having announced Hasbro's commitment to Date Certain, Hassenfeld turned to the American Toy Association where he was a board member, asking it to make commitment to Date Certain, a condition of membership (IC61 2010). The proposal was accepted by the Board. A full-time staff member was hired to train association members on the adoption of the ICTI CARE Process. The Danish, German and Swedish national associations followed the lead of the Americans and adopted similar policies. This led to significant increases in the pace of adoption of the certification. By 2010, 75% of the global toy business had made a "Date Certain" commitment (ICTI CARE Foundation 2010).



The ICTI CARE Foundation also began to directly appeal to retailers, who were not necessarily members of the International Toy Council, to request the toy brands that were their suppliers to adopt recognize the ICTI CARE Process. Unlike toy brands, for whom migrating to ICTI CARE was time consuming and expensive, ICTI CARE could save costs for retailers, who could just request that toy brands adopt the certification as part of their contracts. The intended effect of recruiting retailers to ICTI CARE was to add additional commercial pressure on toy brands to adopt the certification, which in turn pressured factories to get certified by ICTI CARE. This strategy had considerable impact. For example, when KarstadtQuelle, a large German retailer, agreed to recognize the ICTI CARE Process, several of its German suppliers followed by adopting the CARE Process as well (Biedermann 2006).

The ICTI CARE Process thus moved gradually from its beginnings as a weak, framework to the most widely used mechanism to assure social standards in the industry. Compared to 2004, when it had virtually no members, by 2007 nearly 2400 factories representing half of factories that produced for export in China and up to ninety percent of workers in the toy industry were certified by the CARE Process (Lin-Hi 2012). As one toy auditor explained in 2010 “if you are a toy factory, you need ICTI Seal of Compliance, if you fall foul of ICTI, then you are out of business” (IC46 2010).

## Conclusion: Actors and their Interactions on the Governance Triangle

This section analyses the way which the main actors which participated in the development of the ICTI CARE Process and how they played a role in bargaining to establish the ICTI CARE Process.

Table two provides a snapshot of the actors and the stage of their appearance in the development of the ICTI CARE Process. Table three pinpoints the key actors who pushed the agenda of corporate self-regulation at each stage of the development of the certification programme.

**Table 2 Organizations in the ICTI CARE Process**

<b>Organization</b>	<b>Function</b>	<b>Stage of Appearance</b>
<b>Toycott Campaign: American Federation of Labor Organizations, National Consumers League, Democracy for China Fund</b>	Campaign to restrict consumption of goods produced in China. Motivated by human rights concerns	Issue Emergence
<b>60 Minutes/Harry Wu</b>	Expose ways that China exploits political prisoners for commercial gain	Issue Emergence
<b>Toy Coalition: Asia Monitor Resource Centre World Development Movement (UK), the International Confederation of Free Trade Unions, the American Federation of Labor Organizations (US), Trocaire (Ireland), Workers Party (France), Asia Pacific Worker Solidarity Links, People’s Solidarity for Participatory Democracy (Korea), Japan Citizens Liaison Committee for the Safe Production of Toys (Japan), Indonesian groups and the Maquila Solidarity Network in Canada</b>	Pressure toy companies and industry associations to adopt voluntary codes of conduct to protect the health and safety of workers	Issue Emergence
<b>British Toy and Hobby Association</b>	Adopts first industry code of conduct as a result of Kader and Zhili toy factory fires and the Toy Coalition Campaign	Issue Emergence
<b>International Council of Toy Industries</b>	Adopts code of conduct for entire industry	Issue Emergence
<b>NBC Dateline</b>	Exposes on practices at supplier factors to Mattel. Demonstrates Mattel is not fulfilling code of conduct	Intervening Period
<b>Toy Manufacturers Association</b>	Introduces concept of industry certification to ICTI	Intervening Period
<b>Mattel</b>	Co-develops technical standards for ICTI CARE Process with Hasbro	Intervening Period
<b>Hasbro</b>	Co-develops technical standards for ICTI CARE Process with Mattel	Intervening Period
<b>ICTI CARE Foundation</b>	Created to administer the ICTI CARE Process	Intervening Period
<b>Alan Hassenfeld</b>	Pushes peers to adopt the ICTI CARE Process	Industry Self Regulation

**Table 3 Key Actors in the ICTI CARE Process**

<b>Period</b>	<b>Key Actors</b>
<b>Issue Emergence</b>	Toy Coalition, British Toy and Hobby Association
<b>Intervening Period</b>	Hasbro, Mattel, Toy Industry Association
<b>Industry Self Regulation</b>	Alan Hassenfeld, National Toy Association, Toy Retailers

While business organizations and NGOs played substantial roles in the development of the ICTI CARE Process, there are several ways that the broad categories of Firms, NGOs and States do not adequately capture actors, their interests and capabilities, nor the interactions between them.

First, the range of business actors and their diverse and conflicting interests, specifically significant distinction between the interests of large American brands, who pushed their suppliers to self-regulate, and Chinese factories, who had the burden to implement them is not fully recognized by the Governance Triangle. Consequently, while Hasbro and Mattel had the will and technical resources to develop detailed auditing guidelines, they did not have direct control to implement them with the result that capacity to implement the standards was fragmented. This does not come as a surprise; O'Rourke (2006) and Vogel (2009) have addressed these types of problems in supply chain regulation. However, because the Governance Triangle groups business actors in a single category the schema does not identify this issue. This is particularly important in the context of bargaining for transnational standards, where Abbott and Snidal (2009) focus on bargaining across different types of actors on the Governance Triangle. In this case, the interests and capacity of business actors diverged so that intra-actor bargaining between American toy brands and Chinese factories played a significant role in negotiating the ICTI CARE Process and setting up the ICTI CARE Foundation. The relationship between brands and factories also affected how the bargaining process took place. The ICTI CARE Process was negotiated through the International Council of Toy Industries based on mutual interest. It was not a deliberative form of bargaining.

Another type of business actor which played a significant role in the development of the ICTI CARE Process were industry associations. At the international level, the International Council of Toy Industries helped to mediate between brands and factories. As a result, the industry was able to reach consensus on a set of industry-wide standards. This is consistent with the observations made by Rees (1994) and Rees (1997) in studies on national systems of industry self-regulation which describe how industry associations play a role in establishing norms and administering regulation in national contexts. At the national level, industry associations also helped to promote adoption of the ICTI CARE Process by including certification as part of membership requirements. This is a form of what Prakash and Potoski (2007) refer to as "club standards": businesses were willing to take on

regulatory burdens in exchange for membership to a group because membership in the group provided compensatory benefits.

The capacity of industry associations is unique from other types of business actors because of their focus on identifying shared interests. While the Governance Triangle does not recognize industry associations as a distinct actor, Abbott and Snidal (2013) have discussed the need for “orchestration” in transnational regulation, meaning institutions who centralize and coordinate transnational regulation. Toy industry associations appeared to play this role by facilitating the development of industry norms, diffusing standards and administering them. Identifying whether this type of capacity exists within the category of business actors is therefore important.

The more successful organization by NGOs in this case follows Keck and Sikkink’s (1999) description of transnational advocacy networks, where NGOs in developing countries, who have grievances work with their counter-parts in developed countries to mobilize campaigns. Here there is an important distinction between the capabilities of developing and developed world NGOs, with the former having specific resources to monitor and the latter well-skilled at public campaigning. Recognizing these intra-actor distinctions is helpful to map the distribution of capacity across NGOs. Whether this capacity is linked also appears to influence NGO positions in the bargaining process.

The experience of the Boycott, where US-based NGOs did not link their campaign to any real examples of mis-conduct at Chinese toy factories, nor to any local groups which were able to investigate factory operations illustrates this point. In contrast to the Toy Coalition, where disputes between businesses and NGOs centred on conceptual problems such as whether toy brands (and not states or other actors) could accept responsibility for the behaviour of their suppliers, businesses were able to dismiss the arguments of the Boycott because they were not based on any material evidence. The comparison of the Boycott with the Toy Coalition indicates that the likelihood of a single NGO (particularly ones that are domestically organized) to possess both skills is low. Furthermore, without both capabilities, the likelihood is also low that NGOs are able to challenge

business positions. Such distinctions merit further breakdown of NGOs according to their capabilities and suggest that paying attention to the organization of networks, as opposed to the specific interests and capabilities of individual NGOs can yield more insight into the strength of their bargaining positions vis à vis business organizations.

While the Governance Triangle recognizes that the state plays a role in setting transnational regulatory standards, it emphasizes the interactions between businesses and NGOs as primary. This appeared to hold true on initial examination of extent in the development of the ICTI CARE Process because state actors appeared most notable for their absence. Early campaigns in the United States to limit the Sino-American trade relationship failed and the United States took no steps to make trade with China conditional on human rights concerns. Neither did the Chinese state play an active role in developing or promoting the ICTI CARE Process. Still, while states were markedly absent from directly developing the ICTI CARE Process, they had significant influence over the content of rules. For example, most aspects of the Code of Business Practices, which was the cornerstone of the ICTI CARE Process, were modelled on ILO standards or referred to national labour laws. Furthermore, on areas of conflict, such as freedom to organize, the Chinese government had the last word. Thus, while industry actors played the most significant part in developing a mechanism to monitor and enforce standards, in line with Drezner (2008) the rules of the game continued to be shaped by state organizations. Thus, while state organizations may not play a direct role in bargaining, they play one that is both significant and indirect because both national laws and international convention shape the playing field upon which non-state actors conduct their own bargaining.

This analysis also finds two actor types which played meaningful roles in the bargaining process but were a distinct category from Firms, NGOs and States. The first is the individual policy entrepreneur actor, in this case exemplified by Alan Hassenfeld, the CEO of Hasbro. While Hassenfeld can be defined as a business actor, his actions as an individual were separate, particularly as he committed personal resources to the ICTI CARE Process and intervened personally at points the certification was

failing. This suggests that although organizations are central actors in bargaining, the individual interests and capacity of those who work in them may also play a role.

The second actor type is the media. In this case, a 60 minutes documentary mobilized the Boycott campaign. The impact of this documentary demonstrates that the media is not necessarily a vehicle of campaigns organized by NGOs, but can also serve to influence events independently.

## Chapter Three: Emergence of the Harkin Engel Protocol

### Introduction

As with Chapter 2, this chapter focuses on defining the actors and their interests and capacity within the framework of the Governance Triangle and examining their interactions in the process of establishing industry self-regulation. The second case study which was selected for this thesis is the Harkin Engel Protocol which was formed to address- labour abuses in the chocolate industry. Using the same approach as the previous chapter, it first identifies key industry participants and secondly examines their roles and relationships over three stages of the development of the Protocol.

### Organization of the Chocolate Industry

Chocolate production involves several organizationally distinct steps, from the growing of the cocoa beans, to the sale of the finished product. The first step is cocoa production, which is an agricultural activity. For almost a century cocoa production has been centred in West Africa, with Côte d'Ivoire and Ghana accounting for over 70% of the world's cocoa supply (Dand 1999). In Côte d'Ivoire and Ghana, cocoa is produced on over one million small-hold farms dispersed across both countries. Governments in both countries have traditionally played a central role in their respective cocoa industries. In Côte d'Ivoire, the government-run marketing board, *La Caisse de Stabilization* (Caistab), set prices and granted licenses to private traders until the 1990s when it was forced by creditors to privatize. In Ghana, the Ghana Cocoa Board (Cocobod) sets prices, sets and enforces quality standards. It has a monopoly meaning that it is the only seller to the export market. All cocoa produced in Ghana and exported must go through Cocobod.

The second step in the process is cocoa trading. Within Côte d'Ivoire and Ghana, domestic actors play central roles in physical trade. In Côte d'Ivoire, *pisteurs* and *traitants*, (private individuals or small organizations) purchase cocoa directly from farmers at village buying stations and transport it to port areas where it is sold to international export companies. Under this system it is possible for cocoa to be traded several times before it is exported. In Ghana, cocoa is traded at local buying

centres which are operated by Cocobod. Once cocoa has been weighed and graded, it is sold either directly to Cocobod or to private buyers, who handle about a third of the crop (Anti-Slavery International 2004). Private buyers include cooperatives such as Kuapa Kokoo and larger international traders such as Olam. Subsequently, they must sell to Cocobod at a fixed price, which in turn sells to international exporters.

Next, cocoa beans are ground and processed. Cocoa processing is dominated by a handful of large multinationals including Archer Daniels Midland, Barry Callebaut and Cargill, which account for over 50% of the world's cocoa grindings (International Cocoa Organization 2006). Finally, processors sell the processed cocoa to chocolate manufacturers, who produce and market finished chocolate. Chocolate manufacturing is also heavily concentrated, with Nestlé, Mars, Kraft and Hershey, accounting for over 50% of the consumer market.

As shown in the previous chapter, an industry organization, the International Toy Council helped to unify the governance of the toy industry. There is no equivalent organization in the chocolate industry. While the chocolate industry is dominated by a small number of manufacturers and processors - mainly located in the United States and Europe, cocoa production has traditionally been overseen by state organizations in the producing countries. International coordination has historically been directed at the state-level, through organizations such as the International Cocoa Organization<sup>22</sup>, or based on a specific dimension of chocolate production, as is the case with the Federation of Cocoa Commerce, a trade body set up in 1935 to establish a contractual framework for international cocoa trade. State organizations still play a prominent role, particularly in trade and export. Industry coordination is fragmented on national lines or aspects of production.

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<sup>22</sup> Set up by the United Nations in the 1973 as a mechanism to improve market transparency and oversee and manage fluctuations in supply and demand.



## Issue Emergence

The issue emergence stage of the Harkin Engel Protocol took place in the 1990s when commodity prices were declining and a fungus called Witch's Broom began to compromise cocoa production. This disease was first identified in Brazil, where the fungus decimated production by one third over the space of five years. As state aid organizations, chocolate manufacturers and ecologists began to investigate the cause of the disease they discovered that conditions were ripe for the disease to spread because cocoa producing countries had made limited investments to educate and support farmers on disease prevention. At the same time price decline was leading to political instability in Côte d'Ivoire, the world's largest cocoa market. The drop in commodity prices meant that no country producing cocoa had adequate resources to address the ecological challenges exposed by Witch's Broom. American chocolate manufacturers acted initially with the narrow goal to control Witch's Broom, however they were approached by USAID and the US Department of Agriculture to address the underlying problems of political instability. There was gradual consensus across large chocolate manufacturers and state agencies that political and environmental issues needed to be addressed simultaneously. The industry formed a new organization, called the World Cocoa Foundation for this purpose. Focussed on supporting the development of farming techniques in cocoa producing communities, the World Cocoa Foundation represented the industry's response to the social and ecological challenges of cocoa production.

### Political Instability in Côte d'Ivoire

Cocoa production formed the backbone of Côte d'Ivoire's economy from its independence in 1960. With an abundance of land and high commodity prices at the time, the policy of the President, Félix Houphouët-Boigny was "the land belongs to those who use it" (Ruf 2001). Both native and migrant farmers were encouraged to cultivate unclaimed forest land (Crook 2001). Because land and migrant labour were abundant and cocoa prices were generally increasing, Côte d'Ivoire's share of global output more than doubled in the 1970s, turning it into world's leading cocoa producer (Bogetic, Espina et al. 2007).

The country was stable and prosperous for many years as a result of the cocoa boom. However, its fate began to turn from 1979 when prices began to dramatically decline. The cocoa economy in Côte d'Ivoire was based on a system of rents and patronage. A group of domestic buyers, processors, manufacturers and exporters were granted access to the market under a guaranteed price and farmers were provided with income security from Caistab, the government marketing board. However, as downward price pressure continued, the government could no longer support this system and became bankrupt. The cocoa sector began to privatize in 1989 when Côte d'Ivoire had to appeal to international donors who in turn granted loans on the condition that the sector liberalize.

Guaranteed producer prices were reduced and then subsequently phased out over the 1990s. The role of Caistab diminished; it discontinued services and eliminated controls in the domestic marketing system. By 1995, it began to withdrawal from direct economic activities. It limited its direct sales in the export market and sold its stake in SACO, the largest domestic processing operation in Côte d'Ivoire. In 1999, the sector was fully liberalized and Caistab was dismantled.

With the dismantlement of Caistab, problems that had been created by Houphouët-Boigny's expansionist policy began to surface. Agricultural expansionism was meeting its natural limits and farmers could not increase their yields by moving to new areas. Older farmed areas were suffering from neglect because the early expansionist agricultural policy did not given incentives to farmers to invest in inputs to improve crop yields. Resource scarcity, caused by declining cocoa prices and yields, prompted conflict between groups which saw themselves as 'Ivoirian' and migrants who had been the beneficiaries of the flexible system of land rights. After the death of Houphouët-Boigny in 1993 these conflicts became more pronounced. The period of privatization became the most unstable era since Ivoirian independence (Crook 2001).

The country became divided between the South, populated by Christians, who Henri Konan-Bedie, the successor to Houphouët-Boigny labelled as 'true Ivoirians' and the North, dominated by

Muslims who were labelled as 'foreigners' (Crook 1997). Bedie began to restrict the voting and land rights of foreign workers and attacks against Northerners and foreigners by disenfranchised Ivoirians began to rise (Woods 2003). Bedie also manoeuvred to bar his most serious rival, Alassane Ouattara, a Muslim of Burkinabe origin, from politics on the basis that he was a foreigner. This was a decision that set Côte d'Ivoire on a path towards civil war (Woods 2003).

The effect of declining commodity prices combined with increased competition for resources was particularly devastating because cocoa was the country's central export and the Cote d'Ivoire the world's largest producer. These problems were nevertheless not confined to Côte d'Ivoire. All countries exporting cocoa were affected to some degree as farmers struggled to manage their crops with fewer resources (Bryceson 2002). The lack of investments farmers made in their crops had devastating implications for cocoa yields and is how the second issue, of ecological preservation, led chocolate businesses to understand them as part of the same problem.

#### Witch's Broom

In the 1990s, a fungus called Witch's Broom plagued Brazil, reducing its production of cocoa by one third over the space of five years. The threat of Witch's Broom in South America was intensified by an outbreak of Black Pod disease, a fungus more commonly found in West Africa as well as that of the Cocoa Pod Borer which migrated from Indonesia (Young 1998, Shapiro and Rosenquist 2004). Witch's Broom was cause for alarm; according to one agricultural scientist "Brazilian farmers are going out of business. It is a cancer which destroys the tree and makes the growing of cocoa pods impossible. Should this disease spread to parts of the world where cocoa production is greater, the implications would be enormous." (Thacker qtd.McGivern 1998)

One American chocolate manufacturer, CHOCO-LOT, who had historically not taken a significant interest in the technical aspects cocoa production, began to develop concerns about the sustainability of the cocoa supply due to the growing threat of Witch's Broom. As a representative from CHOCO-LOT explained:

*In the 1980s, CHOCO-LOT was just buying cocoa on the terminal markets but we did not actually have an estimate of the size of the crop. And there was a view*

*among some that the market would just take care of things – if for example, crops were devastated in Brazil, then we could move to Indonesia and so on. In the mid-1990s there was an internal battle between the R&D team and the commercial teams at CHOCO-LOT about whether CHOCO-LOT should intervene or whether a market approach was adequate. (HP23 2010)*

Preliminary assessments by CHOCO-LOT showed that businesses could not afford to leave matters to the market because the land available to grow cocoa was limited and because “government institutions were weak and there were weaknesses at the farm level in terms of extension services” (HP23 2010). From these assessments, CHOCO-LOT decided on a strategy to “look at partnerships to address these issues” (HP23 2010).

CHOCO-LOT worked through the Chocolate Manufacturers Association, an American trade organization, to coordinate with its peers, who also had concerns about the supply challenges. The issue appeared to be so critical that one news publication fretted in 1998 “It's not time yet to start hoarding, but people are eating chocolate bars twice as fast as chocolate is being produced and this year's cocoa crop is falling behind expectations” (1998). In addition to working with industry peers, CHOCO-LOT approached the United States Department of Agriculture. One former employee who later became involved in the creation of the World Cocoa Foundation, explained:

*I had experience in PPPs [public-private partnerships] in the grain industry and ran into CHOCO-LOT in the halls of the State Department. Our conversations led to the fact that CHOCO-LOT and other companies were worried about production shifts in cocoa from one country to the next. They wanted farmers to stay on land and invest rather than for production to move from place to place. (HP9 2010)*

#### Industry and State Coordination

A state organization which also began to coordinate with CHOCO-LOT was USAID. While CHOCO-LOT, was motivated by the desire to assure a long-term supply of cocoa, the mandate of USAID was to monitor political stability in developing countries where the United States had interests. At the time that CHOCO-LOT was responding to the Witch's Broom crisis, USAID's assessment of West Africa was that it was extremely vulnerable to instability due to tumbling commodity prices. According to a CHOCO-LOT executive:

*USAID had gotten interested in West Africa at about the same time [as CHOCO-LOT] in connection to some political instability related to Liberia and Nigeria conducted assessments in the area which came to similar conclusions – that good grief, the population in West Africa relies on cocoa, but farms are old, and farmer income is inherently unstable. USAID approached us and said ‘ doesn’t this bother you’ - They asked us to change the thinking about supply chain risks; to take a regional approach.(HP23 2010)*

At the behest of USAID chocolate companies began the issues, of political instability resulting from low commodity prices and resource scarcity and the issue of crop management as necessarily linked. By 1998, CHOCO-LOT had amassed support from industry peers, agricultural and ecological experts and state organizations that were in consensus about the scale and nature of the ecological threats to cocoa. It sponsored a conference at the Smithsonian Institute for Tropical Agriculture in Panama where organizations including the Nature Conservancy, Conservation International, Rainforest Alliance, World Wildlife Fund, the MacArthur Foundation, United Nations Development Programme, USAID, World Bank, the American Cocoa Research Institute and the cocoa and chocolate industry met to address anxieties about long term supply created by the ecological problems that had been identified as a result of the Witch’s Broom crisis. The purpose of the conference was to “address the positive role traditional cocoa farming plays in the tropics, and the issues, opportunities and research needed to ensure the future of ecologically sustainable cocoa production” (Smithsonian Tropical Research Institute 1998). Conference participants agreed to a “consensus statement” (HP23 2010) on the definition of sustainability and on the requirements of sustainable cocoa production. Reporting on the conference, one journalist explained:

*Sustainability is a broad notion that includes keeping farms partly forested for biodiversity, farming without large doses of pesticides, fungicides or fertilizers, and replanting rather than abandoning farms. For cocoa, researchers say sustainability will require a shift away from the large plantations carved out of the rain forest to the smaller farms where cacao trees are grown in the shade of larger trees. Plantation trees, exposed to the sun, require more fertilizer, fungicide and pesticide, and are at greater risk of the spread of pests and disease. Plantations fail when the cost of maintaining them becomes prohibitive. (Yoon 1998)*

As a result of the Smithsonian conference, industry participants agreed to establish the World Cocoa Foundation to be “the focal point and thought leader on cocoa sustainability” in 2000 (World Cocoa Foundation 2008). Headquartered in Washington, the organization was member-based and open to

all types of chocolate businesses internationally. This was an organizational structure that was unprecedented in the chocolate industry. World Cocoa Foundation projects were intended to be public-private partnerships to assist with the development of agricultural extension services in producing countries. Programmes were also designed to target farmers so that they could have access to sustainable farming methods. For example, one early programme under the management of the World Cocoa Foundation was the Sustainable Tree Crops Programme, organized in partnership with USAID and the International Institute for Tropical Agriculture. In line with USAID's concerns about West Africa's political instability, the focus of the programme was on the development of Farmer Field Schools which were designed to develop the farming agricultural capabilities of small-hold cocoa farmers.

The creation of the World Cocoa Foundation was considered a success by industry participants. Not only was it the product of coordination across a range of industry participants, NGOs and state organizations, it also had the potential to address key strategic problems associated with the sustainability of cocoa production. As an executive from CHOCO-LOT explained "[the industry] thought it was working towards a good idea with the World Cocoa Foundation, we were beginning to understand the supply chain" (HP23 2010).

In summary, at the issue emergence stage of the Harkin Engel Protocol, large American multi-nationals and American state agencies played an active role in problem identification. Chocolate manufacturers began to organize globally through the World Cocoa Foundation to develop a solution to what they understood to be a significant ecological threat to cocoa supply. At this stage, the organizations who worked to define the issues affecting problems in the West African cocoa sector did not identify trafficking or slavery as significant; in fact, the issue did not even appear on their radar. However, this was about to change.

## Intervening Period

The intervening period in the emergence of the Harkin Engel Protocol as characterized by a change in focus from addressing the ecological risks in the production of cocoa to the issue of child trafficking in the cocoa supply chain. This change in direction was triggered by a single event – the airing of a *Panorama* documentary in the fall of 2000 about child slavery in the Ivoirian cocoa industry in the United Kingdom. This sparked a media scandal. Different actors with the ability to influence became involved, including journalists, British chocolate manufacturers, anti-slavery organizations, and the UK and Ivoirian governments.

Chocolate companies in the United Kingdom struggled to deal with the claims made in the media and unwanted consumer attention. Initially the work of the chocolate industry on agricultural sustainability was kept separate from the child slavery scandal UK business organizations took the lead in coordination with the UK government to establish an approach to address claims that child slavery was used in the supply chain.

[Trafficking and Child Slavery in West Africa: Linked to chocolate manufacturing by the media](#)  
In the emergence phase the industry focused strictly on agricultural sustainability. Labour issues were not viewed as of immediate concern. As an executive from CHOCO-LOT explained:

*I was traveling extensively to Africa, when I travelled to Abidjan, I saw the cities were a lot worse. Although there was poverty in the country, it didn't seem as bad as the city – my initial take was that well, it is a family farm. In retrospect, maybe these were excuses, but at that time I really didn't appreciate that [child labour and trafficking problems]. (HP23 2010)*

Commodity prices continued to plummet in the 1990s and regional conflicts in West Africa escalated. Landowners had less resources and regional border controls were porous. The result was that migrant agricultural workers were facing increasing levels of exploitation. Development organizations such as UNICEF and Save the Children began to campaign to improve border controls in the late 1990s to prevent trafficking of agricultural workers between Mali and Côte d'Ivoire (Shahin 2001, Dottridge 2002). The seriousness of the problem prompted the ILO to develop a monitoring system for child agricultural workers in partnership with regional governments under a

programme called the West African Commercial Agriculture Project to Combat Hazardous and Exploitative Child Labour (International Labour Organization 2006).

Kevin Bales, a sociologist-cum-anti-slavery activist affiliated with the UK NGO Anti-Slavery International began to research the issue of contemporary slavery after a chance meeting with an anti-slavery campaigner on a London street. He published a book called *Disposable People: New Slavery in the Global Economy* in 1999 which examined slavery in industries such as brickmaking in India and prostitution in Thailand. With the support of two documentary film producers, Brian Edwards and Kate Blewett, the book was transformed into a documentary, for the BBC's investigative reporting programme *Panorama*. The goal was to mobilize consumers and industry to act to address slavery. The initial intention was to document the use of slavery in several supply chains. Based on a UN report, the documentary team travelled to Côte d'Ivoire to find examples of slavery in the cotton industry. However, on arrival, this changed. As Bales recounts in a subsequent book:

*The crew went to the Ivory Coast because we had found a U.N report that talked about children being forced to work on farms growing cotton. The hope was to track down this story and film it; the image of enslaved Africans in cotton fields had too much resonance to pass up. But when the crew reached the Ivory Coast, a local worker announced that nineteen teenagers had just been liberated from a cocoa farm. (Bales 2007)*

Based on these findings, the documentary changed its focus in Côte d'Ivoire from cotton to cocoa. It included the first-hand accounts of several people. There was an emotional interview with a boy named Drissa, who had escaped physical torture working on a cocoa farm. The President of the Malian Association of Friends, a local NGO, was also interviewed. He claimed that up to 90% of the cocoa in Côte d'Ivoire was produced by slave labour (Edwards and Blewett 2001).

The producers of the documentary "knew this was going to be scandalous" (HP8 2010) They combined the airing of the documentary with an appeal to consumers to write to chocolate companies to pressure them to adopt standards to ensure that chocolate was produced without the use of slave labour. Brian Woods, one of the documentary's producers told the



press "consumers should ask the firms: What are you doing to ensure your chocolate doesn't have any slavery in it?" (Woods qtd.Baird 2000).

The campaign launched by the producers of the documentary was based on the assumption that chocolate companies had the power to resolve the problem. According to Blewett:

*"These are companies whose annual turnover is bigger than the entire Gross National Product of Cote D'Ivoire and Mali combined. If they wanted to change things, they could, and they could do it far quicker and more effectively than any bank or government."*(Blewett qtd.Stonehouse 2000)

Chocolate companies were caught unprepared. Although they had been given some notice; as one chocolate manufacturer remembered:

*The film team may have made some inquiries – maybe it was a journalist, but a few of us has heard about this programme and no one had seen it. The feeling was generally 'gee I hope this does not turn bad' but as it got closer [for the airing date], people started getting nervous.* (HP22 2010)

The first reaction of the British Cake, Chocolate and Confectionary Alliance, which represented all of the UK's major brands including Cadbury, Rowntree and Terry's, was one of denial. Responding to the documentary, the British industry association claimed:

*In this time, we have never seen evidence of slavery or reports of its existence. If we had, we would have taken appropriate action directly and with relevant government agencies. The industry works closely with non-governmental organisations and foreign aid agencies in the area and no reports of slavery have been received by these groups. We do not believe the farms visited by the programme are in the least representative of cocoa farming in Cote D'Ivoire, although the claims cannot be ignored. If, in the course of our visits later this year, any evidence of these abhorrent practices is revealed, we will inform the appropriate authorities and insist they take preventative action.* (BCCA qtd.Stonehouse 2000)

The documentary sparked a letter writing campaign in the UK where "horrified consumers alerted Cadbury and Nestle to the threat to their profits, if they cannot prove their products are "clean""(Baird 2000). The claim that 90% of cocoa was produced with forced labour made enormous public impact. This claim was reiterated in the press repeatedly, for example one journalist wrote:

*The slavery documentary shown last month said that in the Ivory Coast, the world's largest cocoa producer, 90 per cent of cocoa plantations use slaves. They are paid nothing, beaten or threatened with violence if they try to escape and sold at markets for around GBP 20 each.* (Baird 2000)

Genuinely concerned about the gravity of the claims and eager to disprove the 90% figure, Cadbury announced it was “working with our industry partners to find out the extent of this problem”(Cadbury qtd.Baird 2000). In conjunction with the British Cake, Chocolate and Confectionary Alliance Cadbury commissioned the National Resources Institute to prepare an independent to examine Côte d’Ivoire’s cocoa farms.

The Ivoirian government was infuriated by the media attention. In a private setting, one official went so far as to speculate the controversy was a “conspiracy of the North” (HP9 2010), who supported the banned opposition leader Ouattara. Speaking to the press, the Ivoirian ambassador to the UK was more diplomatic, although his anger over the documentary was palpable. According to one reporter:

*The Ivory Coast has rejected allegations that child slavery is widespread on cocoa farms as "nonsense" and "wildly inaccurate". The documentary shown on British television station Channel 4 on Thursday made unsubstantiated allegations damaging the Ivory Coast, said Kouadio Adjoumani, the country's ambassador to the UK. (BBC World Service 2000)*

The hostility of the Ivoirian government towards the reports meant that research was confined to desktops because researchers could not visit Côte d’Ivoire due to the “delicate political situation” (Denny 2001). Consequently, the only conclusions of the research were “that the conditions in the sector make it quite likely that slavery exists, and that the chocolate manufacturers need to do more to ensure their products are not tainted by it”(Denny 2001).

#### Etireno Incident and the Anti-slavery taskforce

In the spring of 2001, as the initial public outcry against the slavery scandal began to wane, a man claiming to be a police officer called Benin’s justice ministry with information that a boat called the MV Etireno had been turned away from Libreville, in Gabon because it was carrying Beninois child slaves. First published in a newspaper in Benin, the story was quickly snatched up by international publications and NGOs who linked the ship to the slavery claims made in the *Panorama* documentary. As one reporter explained:

*The Etireno, which had left Cotonou on March 27, is said to have been a regular visitor to impoverished Benin in recent years ferrying children sold into slavery, many of them to prosperous Gabon or Ivory Coast cocoa plantations. World Vision research shows that while supermarkets take more than 34 per cent of the price of a chocolate bar, less than 4 per cent goes to the cocoa farmers.*

*The resultant scramble for a tiny section of the profits intensifies the demand for low-cost (or no-cost) labor in the developing countries where a large proportion of the cocoa is grown.*

*At least 15,000 children - some as young as 11, many imprisoned on farms, beaten if they try to escape - are said to be working in the Ivory Coast cocoa plantations from which half the world's chocolate is made. "It's very simple," says World Vision's Greg Thompson. "These children grow that cocoa. It ends up in our supermarket. That child has contributed towards a product we are consuming. "We are contributing to slavery." (Schwartz 2001)*

The claims about the Etireno proved to be false. Having been refused permission to dock at other West Africa ports, the Etireno returned to Cotonou where "The jetties were lined by the just and the good of the aid and government world, along with scores of journalists and even the American ambassador" (2001). The ship was searched and no evidence that was found that children on board were destined for slavery or had been thrown overboard. Even though the reports about the Etireno were mistaken, the incident-captured the public imagination in the United Kingdom and reinvigorated interest in the issue of child slavery which has started to wane. The UK Foreign Commonwealth Office convened a "slavery summit", inviting Ivorian ministers and the UK chocolate manufacturing industry to discuss ways to tackle the problem. The summit took steps to set up a framework to "stamp out slavery" in West Africa (Greenhill 2001) by establishing a taskforce, made up of chocolate companies, West African governments and NGOs "to put a squeeze on the practice" (Greenhill 2001). While the precise goals of the taskforce were not immediately agreed by its members, Brian Wilson, the Foreign Commonwealth Minister who convened the conference emphasized the importance of:

*...ensuring that the legal framework for combating slavery and other forms of forced labour is in place. The most recent instrument is ILO Convention 182 on the Worst Forms of Child Labour. It has been ratified by Ghana, and I understand that legislation to ratify is now before the Cote d'Ivoirian Parliament. Britain will be urging other states in W Africa to ratify too. Governments, international organisations, the industry and the trade and NGOs have their parts to play in ensuring implementation and monitoring of the legal framework.(Wilson 2001)*

The agreement made by participants at the Foreign Commonwealth meeting was that businesses were to play a support function to West African governments, who were strengthening their legal frameworks. Although some consumer campaigns were focused on harnessing business accountability through the adoption of third party certification systems such as Fairtrade, the concept of industry self-regulation was not even entertained. Although affected by the slavery claims, the issue was a dominating topic of Federation of Cocoa Commerce's Cocoa Dinner, one of the industry's main annual events<sup>23</sup>, business organizations dismissed ideas of Fairtrade certification as unfeasible due to their weak governance capacity over the supply chain and the sensitivities of producer governments towards the claims. This view was even supported by some anti-slavery campaigners; for example Beth Herzfeld, a spokeswoman from Anti-Slavery International, which participated in the taskforce, stated "Manufacturers cannot give consumers a 100% assurance that the cocoa did not come through slave hands because they have no way of knowing which particular farms it has come from"(Herzfeld qtd.Greenhill 2001).

The industry's work on ecological sustainability, which had at this point been established through the World Cocoa Foundation continued to be kept organizationally separate; As one American chocolate executive described "we hoped that the [slavery] issue could be contained in the UK" (HP22 2010).

To summarize, in the intervening period of the Harkin Engel Protocol there were two separate areas of activity; one composed of primarily American chocolate companies, USAID, the Department of Agriculture and ecological groups that had come together to develop the World Cocoa Foundation in response to the onset of Witches Broom disease in Brazil, and one composed of journalists, UK-based chocolate companies, anti-slavery NGOs and the British and Ivoirian

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<sup>23</sup> See for example: Button, S. (2001). "Keynote Speech." Retrieved May 13, 2014, from <http://www.cocoafederation.com/events/speeches/2001/chairman.jsp>.

governments that had organized to address questions of trafficking and child labour in Ivoirian cocoa production. In neither case had the idea of industry self-regulation surfaced as an approach.

## Industry Self-Regulation

As a result of a news report in the United States about child slavery on cocoa farms in June 2001, a third overlapping area of activity emerged which involved American media, American politicians, the ILO, labour activists, American business organizations and the World Cocoa Foundation. In this arena, the presence of powerful American politicians who advocated business accountability put industry self-regulation on the agenda for the first time.

News reports about child slavery in the United States stimulates regulatory action  
Although the *Panorama* documentary and the Etireno incident were big news stories in the UK, they were not significant media events in the United States. In June 2001, an investigative newspaper report by Sudarsan Raghavan about six boys who had been trafficked to an Ivoirian cocoa farm was published by Knight Ridder and syndicated across the United States (Easton 2002). The report documented the problem of slavery in Côte d'Ivoire, detailing the tragic lives of the boys who had worked as slaves on cocoa farms and encouraged consumer action. The report caused a sensation in the United States, motivating Congressman Eliot Engel to sponsor an amendment to the annual agricultural spending bill earmarking a quarter of a million dollars from the Food and Drug Association to develop labelling requirements to guarantee that chocolate entering the United States was "slave-free"; the measure was passed in Congress by a vote of 291-115 (Chatterjee 2001). Explaining his motivation for sponsoring the bill, Engel explained "Slavery is continuing to rear its ugly head in the year 2001, I don't think the American people would want to knowingly eat chocolate or cocoa that was harvested by children who were tricked into slavery" (Engel qtd.Chatterjee 2001).

For the Food and Drug Administration to adopt the measure, it had to be ratified by the House-Senate committee on agricultural spending. A senior politician on this committee was Tom Harkin, a long serving senator from Iowa who was a historic champion of labour interests. After the initial bill

was passed in the House,, he called major chocolate companies claiming he “could make the bill pass [the Committee] in a heartbeat” (HP23 2010). This threat caused panic at the Chocolate Manufacturer’s Association, the American industry association for chocolate makers who felt that the issue was outside of their control. According to an CHOCO-LOT executive “we could never put a label on a chocolate bar and feel certain that it was produced without slave labour” (HP23 2010). Consequently, many chocolate companies feared that the legislation would choke cocoa and chocolate imports into the United States. The threat by Engel and Harkin led to an emergency meeting at the Chocolate Manufacturers Association, where its largest members, Hershey, Mars, Archer Daniel Midlands and Cargill agreed to coordinate a response to Tom Harkin. This group was to form the future Global Issues Group which was ultimately responsible for negotiating and implementing the Protocol.

The Chocolate Manufacturers Association hired two high profile lobbyists, Bob Dole, a Republican, and George Mitchell, a Democrat to pressure lawmakers including Tom Harkin to drop the bill. This approach was a public relations disaster. The bill’s supporters used it to chastise chocolate companies for taking a cold-hearted position to such a fundamental human rights issue. As Eliot Engel explained:

*"I am disappointed in the industry, because I would have thought they would have some sort of social conscience. Instead, they are pouring God only knows how much money to continue their profits on the backs of children, and I think they should be ashamed of themselves."*(Engel qtd.Chatterjee 2001)

Tom Harkin offers alternative to statutory regulation

Without certainty that the bill would be passed by the joint committee, Tom Harkin requested meeting with the Global Issues Group to offer a compromise. He acknowledged the concerns of the chocolate industry and proposed “some kind of agreement – why not a protocol?”(HP22 2010). For the Global Issues Group, “the threat of regulation was very real...this alternative was better to accomplish something”(HP23 2010), In other words the group felt it had no other choice than to negotiate a voluntary agreement with Tom Harkin before the joint committee was due to meet in the summer of 2001.

At this stage, new organizations became involved in negotiating what became known as the Harkin Engel Protocol. Working with Tom Harkin were the ILO, and NGOs including the National Consumers League, the Child Labour Coalition, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association, and Free the Slaves, an American affiliate of the UK-based Anti-Slavery International, headed by Kevin Bales. Chocolate companies, the Global Industry Group, representing industry interests was enlarged to include Cadbury, Nestlé, Barry Callebaut, Kraft, Ferrero, the World Cocoa Foundation and the Chocolate Manufacturers Association. In contrast to the intervening period, producer governments were not at the table, whether by choice or design. For example as one chocolate executive explained, Ghana had been asked to join the Protocol but did not want to become involved because its government felt the Protocol was “all political” (HP23 2010). Although the Ambassador to Côte d’Ivoire agreed to sign the Protocol, its government was not invited to negotiate, nor were any formal roles assigned to it. In summary while some organizations which had participated in the stages of issue emergence and intervening period were still visible, others such as producer governments, USAID and the Foreign Commonwealth Office were marginalized. Still others, such as Eliot Engel, Tom Harkin, NGOs and the ILO appeared for this first time, wielding significant authority through the threat of statutory regulation.

Tom Harkin’s bargaining power in the negotiations and his dependence on support from the ILO and NGOs for advice also meant that a new group of child rights activists and unions had influence over the structure of the Protocol. There was a lot of distrust between NGOs and business organizations, between NGOs which saw the Protocol as an opportunity and those that believed it to be a weak and thus unsuitable policy vehicle. For many business organizations, this was the first time that they had even encountered an NGO. One chocolate executive commented “I didn’t even know what [the acronym NGO] meant”(HP18 2010). Business organizations were angered by the advice that NGOs provided to Tom Harkin, which they saw as misinformation. As one chocolate executive recalled, NGOs “thought the cocoa was grown on big plantations and argued well why don’t you just get the

owners to hire adults... there was a tendency not to believe us about the supply. At the time they were making requests for complete traceability and identification systems”(HP22 2010).

NGOs were equally distrustful of business; most had worked in campaigns in other industries such as sporting and apparel, where after a period of opposition, large brands in the United States had come to accept monitoring and certification programmes for their suppliers. Referring to the resistance of chocolate companies towards certification, they claimed they had “heard it all before” (Harkin qtd.Pierce 2001). The distrust of business ran so deep that some NGO organizations such as the International Labor Rights Forum, which had historically campaigned with organizations like the National Consumers League and the Child Labor Coalition, refused to endorse the Protocol, leading to what one NGO described as “a major fracture” between campaign groups (HP9 2010).

#### Negotiating the Harkin Engel Protocol

The negotiations to establish the Protocol were tense. The most important issue on the table was certification. Engel’s original proposal centred on the use of this mechanism to assure no chocolate was produced by slave labour. Unfortunately, there was no consensus among actors either on the use of certification or the way should be defined. NGOs took the position that certification should be comparable to the mechanisms used by Fairtrade. As one NGO explained, certification was:

*...product labelling, that would include tracing the cocoa supply and working with certain standards. The view was that standards would be developed, that the cocoa industry would work with suppliers to develop and implement them. And when those standards were not met, suppliers would face repercussions. (HP31 2010)*

Chocolate companies however did not see certification in the form defined by NGOs as feasible. Defending their position, the Susan Smith, a spokesperson for the Chocolate Manufacturers Association, explained that certification “would hurt the people it is intended to help because it could lead to a boycott of Ivorian cocoa” (Smith qtd.Chatterjee 2001).

At this stage, no one understood the scale of the problem. The 90% figure, which had been recorded in the *Panorama* documentary continued to be referenced in the press and used as a powerful campaign statistic for NGOs. On the other hand chocolate companies took the



position that “the majority of the farmers are not using slave labor” (Graham qtd.Chatterjee 2001). Negotiations occurred under immense time pressure because an agreement had to be reached before the end of September when the bill was due for review in the Senate in September 2001. The chocolate companies lobbied for more time to establish facts before agreeing to a certification plan. As one CHOCO-LOT executive explained “shouldn’t we be using better data and not crafting a Protocol on anecdotal evidence?”(HP23 2010). Nevertheless, through his threat that he would support the certification amendment to the Agricultural Appropriations bill, Harkin pressured the Global Issues Group to make a stronger commitment without waiting for all the facts to be established.

At the time, the World Cocoa Foundation was already planning a baseline survey on agricultural conditions in partnership with USAID and the International Institute for Tropical Agriculture. This was in preparation for the Sustainable Tree Crops Program, an initiative designed to teach farmers about marketing and environmental friendly agricultural techniques. The Global Issues Group proposed that the study be expanded to include questions about trafficking and slavery which the industry could use to formulate an appropriate position on certification. Tom Harkin agreed, but insisted that NGOs be involved in developing a certification plan. As one chocolate executive explained, Tom Harkin “did not want things happening in a black box” (HP22 2010).

Agreement for certification was thus a compromise insofar as it did not immediately require chocolate companies to adopt a strict certification programme. Instead what chocolate companies agreed to commit to in the Protocol was that:

*“in conjunction with government agencies and other parties, industry is currently working on baseline investigative surveys of child labor practices in West Africa to be completed by December 31, 2001. Taking into account those surveys and accordance with other deadlines prescribed in this action plan, by July 1, 2005, the industry in partnership with other major stakeholders will develop and implement credible, mutually acceptable, voluntary, industry wide standards of public certification consistent with applicable federal law that cocoa beans and/or their derivative*

*products have been grown or processed without any of the worst forms of child labor”  
(Chocolate Manufacturers Association 2001)*

This compromise was problematic because it booted the problem forward and there lacked a consensus among business organizations, NGOs and the ILO about what “mutually acceptable voluntary industry wide standards” entailed. For NGOs, certification had to be comparable to existing types of certification schemes in the market. For the ILO, which was about to implement its West African Commercial Agriculture Project to Combat Hazardous and Exploitative Child Labour Programme, designed to monitor child labour in the West African agricultural sector as well as to rescue, rehabilitate and provide education (International Labour Organization 2007), the certification commitment by the industry could be interpreted as a way chocolate companies could fund the emerging ILO initiative. In fact, after the Protocol was signed, the focus of the West African Commercial Agriculture Project changed from applying to all agricultural sectors in West Africa to focussing only on cocoa so that it could appeal directly to the chocolate industry for financial support. As one chocolate executive explained, after the Protocol had been signed “the ILO was knocking on the door [of Global Industry Group members]. The Department of Labour had offered five million [for the programme] and asked us to match funding, but we gave one million. We were constantly derided by Harkin’s office for this. There was the expectation that industry had the money and should fork it out” (HP22 2010).

Business organizations on the other hand had a different point of view, focusing on the fact that certification needed to be “industry-wide”; which in their eyes meant non-competitive. Because chocolate companies competed to identify good sources of supply and so could not share this information across competitors, they saw certification programmes promoted by NGOs as unsuitable for the Protocol. According to one chocolate executive, in the absence of any consensus or clear definition of the problem the Protocol was seeking to address, the agreement by the

industry to certify was “a kind of a scenario of let’s agree to something and figure it out as we go along” (HP22 2010).

### The Harkin Engel Protocol

The result of this lack of consensus was that the Harkin Engel Protocol was only three pages long. It set out six points: These included, in addition to the commitment to move forward on certification, agreement by the GIG to: 1) sign a public statement on the need for terms and an action plan on fighting the worst forms of child labour; 2) Form multi-sector advisory groups to research labour practices; 3) sign a joint statement witnessed by the ILO that recognizes the need to end the worst forms of child labour and identify developmental alternatives for children; 4) Sign a memorandum of cooperation with NGOs for joint action on research, information exchange and action to enforce standards to eliminate the worst forms of child labour.(Chocolate Manufacturers Association 2001) and 5) to “establish a joint foundation to oversee efforts to eliminate the worst forms of child labor...[and] perform field projects and be a clearinghouse on best practices.” (Chocolate Manufacturers Association 2001). These five elements were not controversial. Of note, the joint foundation referenced in the fifth element became the International Cocoa Initiative (ICI). This organization was set up in Geneva “away from the politics of Washington” (HP1 2010). The idea of a joint foundation was proposed by Ron Osborn, a union leader who had been involved in a similar initiative in the tobacco industry which had experienced some success. As one person involved with the International Cocoa Initiative explained, Ron Osborn “was the inspiration of ICI because it [he] said why don’t we do this for the cocoa industry. This is how it all started”(HP1 2010).

In summary, the Harkin Engel Protocol, which was signed and announced to the public on September 14, 2001, was a hastily drafted framework committing the chocolate industry, represented by the Global Issues Group, to self-regulate. Although industry self-regulation never emerged as a policy option in the stages of issue emergence or the intervening period, Eliot Engel’s introduction of legislation in the United States, and Tom Harkin’s subsequent use of this as a bargaining chip persuaded the industry to negotiate the Protocol with Tom Harkin putting industry

self-regulation on the agenda for the first time. Harkin’s involvement gave new power to the ILO and child labour activists, who had been absent or uninfluential at previous stages and pushed out other groups that have previously been influential such as producer governments.

**Table 1 Key Points of the Harkin Engel Protocol**

<b>Point</b>	<b>Purpose/Outcome</b>
Sign a public statement on the need for terms and an action plan on fighting the worst forms of child labour	Make Harkin Engel Protocol a priority for industry
Form multi-sector advisory groups to research labour practices;	Include NGOs in decision-making process for Protocol
Sign a joint statement witnessed by the ILO that recognizes the need to end the worst forms of child labour and identify developmental alternatives for children;	Makes ILO programming relevant to Protocol
Sign a memorandum of cooperation with NGOs for joint action on research, information exchange and action to enforce standards to eliminate the worst forms of child labour	Include NGOs in decision-making process for Protocol; basis for development of International Cocoa Initiative
Establish a joint foundation to oversee efforts to eliminate the worst forms of child labor...[and] perform field projects and be a clearinghouse on best practices.”	Leads to creation of International Cocoa Initiative
Develop and implement credible, mutually acceptable, voluntary, industry wide standards of public certification consistent with applicable federal law that cocoa beans and/or their derivative products have been grown or processed without any of the worst forms of child labor	Commits chocolate industry to develop voluntary certification standards which are the key regime aspects of the Protocol.

## Conclusion: Actors and their Interactions on the Governance Triangle

This section reviews the main actors in the development of the Harkin Engel Protocol and discusses the principle interactions between state and non-state actors.

Table five provides a snapshot of the actors and the stage of their appearance in the development of the Harkin Engel Protocol. Table six pinpoints the key actors who pushed the agenda of corporate self-regulation at each stage of the development of the certification programme. The sheer number of organizations which were involved in this case indicate a level of variation not just across but within actor categories.

**Table 5 Organizations in the Harkin Engel Protocol**

<b>Organization</b>	<b>Function</b>	<b>Stage of Appearance</b>
<b>World Cocoa Foundation</b>	Support research and delivery of capacity building programmes to cocoa growing communities.	Issue Emergence and Industry Self Regulation
<b>USAID</b>	Concerned with stability of Côte d'Ivoire, reaches out to business organizations to form solutions	Issue Emergence
<b>United States Department of Agriculture</b>	Delivers agricultural extension programmes to farmers in the United States and elsewhere; undertakes research on agricultural production	Issue Emergence
<b>CHOCO-LOT</b>	Large American chocolate manufacturer, spearheads industry response to cocoa supply concerns	Issue Emergence and Industry Self-Regulation
<b>Chocolate Manufacturer's Association</b>	Coordinates American responses to cocoa supply concerns and later to threats of regulation in the United States	Issue Emergence and Industry Self-Regulation
<b>Smithsonian Institute for Tropical Research</b>	Hosts conference on sustainability of cocoa supply; setting in which cocoa industry and other organizations agree on steps to take to address supply challenges	Issue Emergence
<b>International Institute for Sustainable Agriculture/Sustainable Tree Crops Programme</b>	Conducts research and delivers programmes on agricultural development. Co-opted to conduct research on prevalence of child labour in West African cocoa industry. Supported by the World Cocoa Foundation.	Issue Emergence and Industry Self-Regulation
<b>BBC Panorama Documentary</b>	Put child slavery in cocoa supply chain on agenda in the United Kingdom	Intervening Period
<b>British Cake, Chocolate and Confectionary Alliance</b>	Coordinate response to BBC Panorama documentary	Intervening Period
<b>UNICEF, Save the Children</b>	Revive media interest in child slavery with "Etireno" incident	Intervening Period
<b>British Foreign Commonwealth Office</b>	Convene meeting with state and non-state organizations to address potential issues related to trafficking and slavery in Ivorian cocoa sector	Intervening Period
<b>Knight Ridder News Agency</b>	Put child slavery in cocoa supply chain on agenda in the United States	Industry Self Regulation
<b>Congressman Eliot Engel</b>	Introduces certification amendment to Agricultural Appropriations Bill	Industry Self Regulation
<b>Senator Tom Harkin</b>	Uses Agricultural Appropriations Bill to pressure Chocolate industry to negotiate the Harkin Engel Protocol	Industry Self Regulation
<b>Global Issues Group</b>	Formed by large chocolate manufacturers and processors to coordinate a response to Senator Tom Harkin	Industry Self Regulation
<b>ILO</b>	Set up West African Commercial Agricultural Project, advisors to Senator Tom Harkin on content of Protocol	Industry Self Regulation
<b>National Consumers League, the Child Labour Coalition, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association, and Free the Slaves</b>	Advisors to Senator Tom Harkin on content of Protocol	Industry Self Regulation
<b>Ron Oswald, Director of International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers</b>	Introduces the idea of the International Cocoa Initiative, an organization which provides support to cocoa growing communities, as part of negotiations for Protocol	Industry Self Regulation

**Table 6 Influential Actors in the Harkin Engel Protocol**

<b>Period</b>	<b>Influential Actors</b>
Issue Emergence	CHOCO-LOT Chocolate Manufacturer, USAID
Intervening Period	Kevin Bales, Kate Blewett, Brian Woods; Save the Children, UK Foreign Commonwealth Office
Industry Self-Regulation	Sudarsan Raghavan ,Eliot Engel, Tom Harkin, Ron Oswald,ILO

Like the ICTI CARE Process, a range of business actors with different interests and capabilities participated in the cocoa supply chain. These included manufacturers, processors, traders and the cocoa producers themselves, which were by and large family operated farms. The government also played a substantial role in trade.

The formation of the World Cocoa Foundation in 2000 was the first example of international cooperation across the industry. Its narrow focus on agricultural issues illustrates how business actors shared a very limited scope of common interests, particularly at the international level. This remained a factor when the Harkin Engel Protocol was negotiated. American chocolate manufacturers and processors who played the most substantial role in bargaining possessed little to no capability to implement certification because of their indirect relationship with cocoa producers. Thus, the broad categorization in the Governance Triangle of businesses who share a similar set of interests and capabilities does not reflect the divergence of interests and fragmentation of capabilities within the category of business actors. The Governance Triangle does not incorporate the relationship of multinationals to their suppliers and competitors which profoundly effects both business interests and business capability to negotiate and implement regulation. A clearer disaggregation of business actors into sub-categories would help to set clearer expectations of business bargaining behaviour.

It is also notable that during the issue emergence period, when chocolate companies identified ecological sustainability as a problem affecting supply, the bargaining they pursued with their peers and other actors including NGOs, was cooperative and not distributive. However, as the issue transformed from agricultural concerns to child trafficking, there was little over-lap between the

interests of businesses and the NGOs who advised Tom Harkin. What this suggests is that business and NGO interests are not necessarily opposed and conflict between them is dependent upon the definition of a problem.

While an NGOs ability to enter the transnational bargaining process is often described in reference to the media (Arts 2002, Alston 2005, Bernstein and Cashore 2007)), in this case study, NGOs exercised power more directly by working through Tom Harkin, with whom they had a historical relationship. One consequence was that the NGOs were primarily American. Political alignment was thus a significant factor affecting whether NGOs had access to a role in negotiating transnational standards.

As with the ICTI CARE Process, NGOs operated in networks. However, the networks were not well developed: in the United Kingdom and United States campaigns against chocolate companies were separate from one another. Nevertheless, the same pattern of information exchange between NGOs who operated in developing countries and those in developed countries which existed in the ICTI CARE Process appeared in the Harkin Engel Protocol. This again underlines there are important distinctions to be made between NGO capabilities and that it is by operating through networks that these capabilities become connected.

One important aspect of the Harkin Engel Protocol is the level of direct involvement played by state organizations. There was direct state involvement across all three stages of the development of the Protocol. During the issue emergence stage, it was USAID who encouraged American chocolate manufacturers to play a more active role in addressing the ecological problems facing the cocoa sector. During the intervening stage, the British Foreign Office facilitated a dialogue between producer states and chocolate manufacturers and helped to set up the Anti-Slavery taskforce. During the final stage of industry self-regulation, Eliot Engel and Tom Harkin played instrumental roles by introducing regulation and using this as a bargaining chip to negotiate voluntary standards for the industry. The level of direct government involvement in this case underscores that government

agencies and institutions can and do play significant roles in negotiating transnational standards. The nature of this role however does not necessarily reflect national interest, but those of the specific agency involved. Engel and Harkin's use of an obscure legislative mechanism also demonstrates how domestic regulation can be used as a bargaining tool.

Another notable feature of the Protocol was the role played by the ILO, which could capitalize on the Protocol's negotiations to advance its Convention on the Worst Forms of Child Labour. When the issue first emerged in the United Kingdom, there was no consideration of the Convention even though it was an internationally accepted framework. However, due to the relationship of Tom Harkin with the ILO, the convention became a centrepiece of the Protocol. While the ILO could facilitate an agreement using its standards, there was also some evidence that the ILO also behaved like a bureaucracy which protected and promoted its own agenda and programmatic interests.

Finally, as was the case with the ICTI CARE Process two actor types, individuals and the media played unique roles which cannot be classified within the categories of Firms, NGOs or States. The most significant individuals in this case was Tom Harkin, who was responsible for transforming the amendment to the House Appropriations Bill into a transnational regulatory agreement. Analogous to Alan Hassenfeld's relationship with Hasbro, although Harkin used the levers of government and thus depended on his organizational affiliation to pressure businesses to negotiate, these levers were not mobilized without individual action. The media also played a significant role in mobilizing NGOs. In both the intervening and industry regulation stage investigative journalists were the primary motivators of public action. The media thus played a meaningful role in setting the regulatory agenda that was independent from NGO activism.



## Chapter Four: Evolution of the ICTI CARE Process

### Introduction

This chapter makes use of a Regime Perspective to study the evolution of the ICTI CARE Process. A Regime Perspective describes regulation as having three linked components: information gathering, which is the capacity to monitor compliance to the regime, standard setting, which is the ability to set rules, and behavior modification, which is the ability to change the behaviours of regime participants. These components are dynamically linked, meaning that a change in one component leads to changes in others. Although developed to analyze state based systems of regulation, the concept of three interconnected activities applies to other types of regulatory settings because it does not define who executes them.

The Regime Perspective is applied in three ways to study the evolution of the ICTI CARE Process. The first maps how information gathering, standard setting and behavior modification activities are distributed across state and non-state actors. In conducting this mapping, it is possible to develop a more detailed picture of the organizations which participate in regulating and the extent to which the process of implementation is controlled by one actor or alternately involves the participation of multiple actors. This helps to answer the first question asked by this study of whether industry dominated transnational regulatory schemes are necessarily sub-optimal.

The second way a Regime Perspective is used is to examine whether the regulatory components developed in each of the case studies are dynamically linked. This is done by examining conflicts of each regulatory component in the two cases. This helps to establish the orientation of different actors around these conflicts and how conflicts between actors enables or undermines the capacity of the ICTI CARE Process to regulate. The final way a Regime Perspective is used is to look at the way conflicts were managed over time. This provides an answer to the second question asked by this thesis of whether business dominated systems of transnational regulation remain sub-optimal or develop capacity over time.

## Organization of the CARE Process

The CARE Process was voluntary. It worked by convincing European and American toy brands to adopt the certification scheme. Toy brands agreed to participate in a programme called “Date Certain”; Under this program they committed to purchasing from only ICTI CARE certified factories by an agreed upon future date. Retailers agreed to a similar process which the ICTI CARE Process referred to as “convergence”, where they gradually recognized the CARE certification in place of their own social compliance requirements. These commitments made by powerful buyers in the supply chain put pressure on toy factories to pay for certification from ICTI CARE. The certification process involved a 1-4 day inspection of factory premises conducted by social compliance auditors trained and certified by the ICTI CARE Foundation. If a factory successfully passed the audit inspection, it was awarded a CARE certification which needed to be renewed on an annual basis. Certified factories could also face unannounced inspections by auditors during the year.

All work to certify toy factories was co-ordinated by the ICTI CARE Foundation in Hong Kong. Detailed auditing standards were reviewed on a regular basis by a technical committee whose members included brands, retailers and factories that participated in the CARE Process. When major revisions to the ICTI CARE Code were required, other organizations were consulted. These organizations included all the national toy associations that were members of ICTI and the ICTI Governance Board.

Industry participants dominated most aspects of the ICTI CARE Process. Toy brands, retailers and factories were not only important to standard setting due to their technical knowledge, the regime also relied on the commitment of large buyers to purchase ICTI certified toys so that factories would pay to be certified. Furthermore, even though the motivation of toy factories to join the CARE Process was weak, hinging on client requirements to do so, they were important participants across all three regime components. Like toy brands and retailers, they contributed to the development of technical standards, pushing back when they felt their scope or stringency was increasing and helping to set more realistic expectations about the types of standards that could be implemented

under existing conditions in factories. From the perspective of one retailer who participated on the technical committee, the opinion of factories in formulating standards was crucial because:

*“it is very easy for the retailer to give some limiting standards without the view of the factory. We are just one of many clients to a factory and clients may come from Australia, Europe or the US. There are so many different restrictions so, rather than just doing their job, factories are just trying to please us rather than make real changes and implementation needs to be something realistic”. (IC153 2010)*

The other organization that was central to the ICTI CARE Process was the ICTI CARE Foundation.

Nested under ICTI, this was an industry organization in the sense that it was funded by the industry and staffed by people with an industry background. However, its only mandate was to promote and implement the ICTI CARE Process so it did not have the competing financial or organizational goals of other industry participants.

Although the ICTI CARE Foundation was a major participant across all regime components, its authority in each of them varied significantly. In some ways, the ICTI CARE Foundation played a minor administrative role, coordinating between the different organizations that had adopted the CARE Process. It had no direct influence over standards and had limited involvement in audits taking place on the factory floor. The Foundation was dependent on the support of toy brands and retailers they were the *de-facto* enforcers of the CARE Process at the factory level. Describing his experience with one retailer who had adopted the CARE Process, staff at the ICTI Foundation commented that “[the retailer] has been good, they say no seal, no delivery. It is in the interest of the factory to comply, then but others just provide lip service”(IC2 2010).

In one important respect, the ICTI CARE Foundation had significant regulatory authority: it made the final decision as to whether factories could retain ICTI certification. This put factories at its mercy. As another Foundation staff member pointed out:

*“Factories think they will lose their business if they lost their certification and it happens with shops like [a major retailer]. I can kill a company by finding a problem but this is how we get factories to work with us.”(IC4 2010)*

The other types of business organizations that participated significantly in the CARE Process were social auditors and service providers. Social auditors were either large quality assurance organizations that had already been serving the industry and had set up social compliance departments in response to demand from toy brands. Because the costs of setting up a social auditing business were relatively small, several quality assurance auditors from the larger firms had also set up smaller specialized social auditing businesses. Likewise, other types of service providers who, as the regime progressed provided training to factories had backgrounds in Corporate Social Responsibility (CSR) from the larger multi-nationals.

State organizations and NGOs were largely absent from the ICTI CARE Process. The one exception was the Chinese Toy Association which, as an arm of the government, had a voice over whether standards for the ICTI CARE Process could be implemented in China. The opinions of the Chinese Toy Association were taken very seriously by the ICTI CARE Foundation, who took great efforts to ensure that all aspects of the CARE Process were consistent with Chinese law. As one employee at the ICTI CARE Foundation explained “right now the CARE Foundation collaborates quite closely with the CTA [Chinese Toy Association] which is headed by Mr. XYZ, who is a government employee. The CARE Foundations has a person in Beijing and someone working at the CTA [Chinese Toy Association] who is 0.5 CARE”(IC2 2010). Consequently, although direct state participation in the ICTI CARE Process appeared to be limited, the ICTI CARE Process worked in close coordination with the Chinese government and its approach to standard setting was directed by the Chinese legal context.

NGOs also played comparatively minor roles in the CARE Process. While there were a few international NGOs which were represented on the ICTI CARE Governance Board, local NGOs that had driven the campaign for codes of conduct in the toy industry such as the Asia Monitor Resource Centre had no formal roles in the CARE Process. Nevertheless, as the ICTI CARE Process evolved, some local NGOs began to participate in minor roles across all aspects of the regime.

Oversight of the CARE Process was executed by the ICTI CARE Governance Board. There were fourteen seats on the Board, five of which were reserved for representatives from civil society. The other nine seats were divided between active and retired industry participants. Alan Hassenfeld, who was instrumental in the creation of the ICTI CARE Process, continued to serve as co-chair of the Governance Board from its inception to the time of this research. The Board played an advisory role and was not involved in the day to day operations of the regime. Thus, although any substantial changes to the ICTI CARE Code or processes required sign-off from the Board, its involvement and influence in the ICTI CARE Process was minimal: no interviews indicated that the Board or any of its members played a significant role in implementing the CARE Process.

Table Six below provides an overview of the organizations which participated in the ICTI CARE Process and the roles they played across the three regime components.

**Table 6: Organization of the ICTI CARE Process**

<b>Group</b>	<b>Information Gathering</b>	<b>Standard Setting</b>	<b>Behaviour Modification</b>
<b>Toy Brands</b>	Delegated to ICTI CARE	May participate in detailed standard setting on the Technical Committee. Original technical standards drawn from Hasbro and Mattel codes	Expected to purchase toys from factories which earn and maintain an ICTI certification. May participate in CAP discussions.
<b>Retailers</b>	Delegated to ICTI CARE	May participate in detailed standard setting on the Technical Committee	Varies from recognition of the CARE label to agreements with brands and ICTI to purchase certified toys. May participate in CAP discussions.
<b>Factories</b>	Subject to regular audits by ICTI CARE Foundation, its agents and clients	May participate in detailed standard setting on the Technical Committee	Face threat of decreased sales if ICTI certification is not maintained
<b>National Toy Associations</b>	N/A	Provide guidance and approve standards	Can make adoption of ICTI CARE a condition of membership to national toy association
<b>ICTI Secretariat/Foundation</b>	Coordinates and oversees audits. Acts as quality control of audits	Coordinates technical standard process	Makes final decision whether factory can use ICTI CARE label. Coordinates negotiations between non-compliant factories and brands/retailers. Coordinates training and education.
<b>Auditors/other service providers</b>	Outsourced to carry out factory audits	N/A	Outsourced to provide training to factories to help them maintain ICTI CARE label.
<b>NGOs</b>	As ICTI CARE evolves independently/outsourced to conduct research on factories and workers	May be consulted on changes to the ICTI Code	As ICTI CARE evolves provide capacity building programmes.
<b>Governing Board</b>	N/A	Advise and approve changes to ICTI CARE rules and processes	N/A

Regulatory activities in the ICTI CARE Process were dominated by industry actors across all three components of the CARE Process. There was a regular and formalized process managed by the ICTI CARE Foundation for setting and reviewing standards for certification as well as for reviewing the overall Code of Business Conduct. Standard setting involved technical input from toy brands, manufacturers and retailers as well of the approval of national toy associations and the governing board in cases where major adjustments were made to the Code. Monitoring of factories was carried out by third party audit organizations. The ICTI CARE Process was enforced through the

revocation of an ICTI CARE certificate, which was administered by the ICTI CARE Foundation. This form of behaviour modification was significant because the major buyers had committed to purchase toys from only ICTI CARE certified factories.

Large buyers continued to be central to the certification programme and their capacity to control toy factories through procurement contracts was essential to the functioning of the programme.

National toy associations also continued to play a notable role by representing the interests of national toy companies. NGOs and state organizations in contrast played very minor roles in the formal implementation of the ICTI CARE Process.

As the ICTI CARE Process was implemented, new types of actors emerged as critical participants in the certification. Toy factories, which were previously treated as the subject of regulation, were increasingly encouraged to participate in substantive ways through technical committees. As IC153 pointed out, their participation was seen as a way to sound check whether the expectations of the ICTI CARE Process were too onerous for producers. The other new type of actor who played a key role in the implementation of the certification was social auditors. The role of auditors has received a significant amount of attention in the regulatory literature.<sup>24</sup> In this case the formal role of auditors was limited to the information gathering component of the ICTI CARE Process. As will be discussed in the next section, this was the most contentious aspect of certification.

The single most important organization in the implementation of the ICTI CARE Process was the ICTI CARE Foundation. The Foundation replaced the International Toy Council which had been instrumental in facilitating consensus across national toy associations on the framework for industry self-regulation. The ICTI CARE Foundation was not always an influential actor. Although it the ultimate authority to grant or revoke certification from factories, it was dependent on the work of auditors for reliable information about factory performance and cooperation from buyers. In this

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<sup>24</sup> Power, M. (1997). *The audit society: Rituals of verification*, OUP Oxford, Power, M. (2000). "The audit society—Second thoughts." *International Journal of Auditing* 4(1): 111-119.

respect, the position of the ICTI CARE Foundation was similar to the industry-organized regulators described by Rees (1997).

On the basis of technical capacity to regulate, all three regime components could be implemented by business actors, indicating that industry dominated regulatory schemes are not necessarily sub-optimal. Nevertheless, the Governance Triangle is concerned about regulation which serves the public interest. In this respect, it is notable that although capacity to regulate existed within the industry alone, it depended upon different actors within it to do so. The variations of interests and capacity between them affected how the regulatory process could be implemented substantively. The next section examines how this worked by examining the conflicts across the three regulatory components and their relationships to one another.

## Conflicts in the CARE Process

This section examines the components of the ICTI CARE Process and their links by looking at the conflicts across the three components and their relationships to one another to study how conflict between actors within the toy industry undermined the ability of the ICTI CARE Process to regulate. The key conflict in the ICTI CARE Process was centred on information gathering and was about factories using evasion and bribery to avoid compliance. This occurred in 2007, when the Foundation discovered that most factories that had been certified by ICTI were not complying with the regime and were instead fabricating evidence and/or bribing auditors to report that their businesses met ICTI CARE Process standards. This section first describes how this problem arose. It goes on to assess whether and how the problem was related to standard setting and behaviour modification. It concludes with a discussion of the position participants in the ICTI CARE Process took in relation to this conflict.

### Information Gathering

The factory audit was the key form of information gathering for the ICTI CARE Process. The CARE Process was designed so that factories paid to be audited and certified. The idea behind this was that if the costs of certification fell evenly across all producers, they could be passed on un-



controversially to buyers. The framework for the ICTI CARE social audit was borrowed from quality assurance audits which had been standard practice in the industry for a long time. The audit was a comprehensive checklist covering in detail issues on health and safety, employee representation, welfare, wages and working hours and later on environmental management (Foundation 2011). The audit was intended to be “black and white” (IC1 2010); it was a pass/fail regime with no room for factories to explain why they were not in compliance with a particular part of the auditing checklist.

Unfortunately, many toy buyers were not actively interested in whether toy manufacturers were substantively complying with ICTI CARE and were satisfied if their suppliers received an ICTI CARE certificate. Several people interviewed explained that toy buyers saw the ICTI CARE Process to protect their reputations from negative news stories about labour problems occurring in their supply chain. As one auditor for the CARE Process described, buyers took an interest in compliance to ICTI CARE only when they got wind that a story about child labour or other types of abuses in the toy supply chain was going to make headlines but would go silent when the problem was safely out of the public eye:

*If the news has a slow day, then retailers will be targeted. I was having lunch the other day with a quality manager from [a retailer] who said that a journalist had called to tell him they had found abuses in the supply chain and that this would be a front page story, but in the end Michael Jackson died, so there was better news...(IC145 2010)*

For this auditor, the CARE Process was “backside covering” (IC145 2010), particularly for major retailers. Even organizations that played leading roles in the CARE Process acknowledged that problems such as cost and delivery pressures often took precedence over the substantive goals of the CARE Process. For example, the interviews for this work took place shortly after a series of product recalls that resulted from lead paint being found in toys produced in China. At that time the issue of toy safety “eclipsed the CSR issue, so the focus on CSR has been put aside” in the minds of major toy brands (IC8 2010).

If toy buyers showed little interest in whether factories substantively complied with the CARE Process, manufacturers had even less motivation to pay for costly labour requirements. In a cost-driven industry, margins mattered. Additional labour costs sustained by complying with ICTI CARE were just another way that profits could be eroded. As one auditor explained:

*The paradox is there is a disconnect between the CSR and purchasing departments of businesses. The way that brands appear to run purchasing is contrary to labour interests –changing the colour of a button at the last minute or any other simple changes that are not budgeted reverberate to impact working hours and wages.(IC139 2010)*

The pressure on factories to be responsive to last minute purchasing requests consequently made factories resistant to the demands of the ICTI CARE audit. The same auditor complained “the problem is that factories don’t want you there” (IC139 2010). Instead of disclosing that factories faced problems of compliance, managers “cooked the books”(IC1 2010) to appear as though they were complying with the certification programme when in fact they were not. Factory managers succeeded in doing this because they could bribe auditors to ignore problems. According to one ICTI CARE employee “if there is a problem [for factory owners], why not fix it with a bribe and this is a problem because the relative wage of the auditor is small” (IC2 2010). Bribery became so widespread that one auditor described a “mafia of auditors” (IC145 2010) who worked in coordination with factory managers to assure their businesses would receive the ICTI CARE certificate in exchange for a fee.

Former auditors also worked directly for factories as consultants, advising them on ways to appear they were complying with the ICTI CARE Process. According to one auditor “auditors are a threat [to factories], so they will hire a consultant, usually an ex-auditor, to forge documents and coach workers”(IC145 2010). A similar view was given by another auditor who explained “worker interviews are useless, you get information about 5% of the time; even in canteens there are posters with an announcement of the top ten answers to give to auditors” (IC48 2010). Faking documentation and coaching workers to answer auditor questions became so commonplace that it

was seen as routine practice by auditors and buyers. As one buyer explained “I have to talk to the vendor and say that I don’t mind that there are 2-3 books.... with the ICTI, I don’t trust the seal, that the records on hours are accurate”(IC8 2010).

Unsurprisingly the first organizations to go public concerns about forgery and bribery in the toy industry were NGOs. Writing in 2005, China Labor Watch and the National Labor Committee, two NGOs based in New York described how audits by Mattel had become corrupted at the Lungcheong Factory in Guangdong Province:

*Monitoring visits are known in advance. Signs are posted on every workshop door instructing the workers how to respond to questions that the monitors may ask. To avoid any mishaps on the day of the audit, new workers along with those that cannot be trusted to strictly adhere to the script are required to take a day off—without pay. In a pattern that has existed for years, management has the workers so terrified that the vast majority of employees censor themselves, knowing if they are not very careful in what they say to the monitors, they will be immediately fired the minute the monitors leave. Workers who are chosen by the monitors for interviews and who respond correctly are given a 200 yuan, \$24.66, bonus, which is one and a half week’s wages. (National Labor Committee and China Labor Watch 2005p.9)*

In 2006, Students Against Corporate Misbehaviour (SACOM) published a similar report about the Qi Sheng Factory in Guangdong Province, which produced toys for Disney:

*We learned that Qi Sheng in fact has two manufacturing premises but only one of them is monitored and audited. While some 100 workers were selected for focused training for the pre-announced audit in May 2006, a majority of 4/5 workers were “hidden” from the scene – they were all allocated to work in the second plant. Through a coaching and drilling exercise, and with the spatial arrangement, the factory had passed the audit.(SACOM 2006p.17)*

The ICTI CARE Foundation recognized that the allegations made by China Labor Watch and SACOM were well founded after conducting a series of quality control audits in 2007. As one ICTI CARE Foundation employee explained “[ICTI CARE] did not generate results that were wanted. Many factories made efforts to present documents, but these documents did not reflect reality. We had QC audits, whistleblowers, we had our own internal QCs [Quality Controls]. Looking at this, we were thinking oh my goodness, the situation looks not good”(IC1 2010). The major tipoff that something was wrong with the ICTI CARE audit process was that most factories which applied for certification

obtained it. This was counter-intuitive because the industry was well known for intense over-time during peak seasons. As one auditor put it “with ICTI, there was so much pressure, all factories were certified, and there was only a 10% failure rate. We have to change, we have to talk to industry because there cannot be compliance like this”(IC139 2010).

The resistance of factories towards factory audits was seen as the key problem with the ICTI CARE Process by the majority of people interviewed. As one major toy brand explained “auditing doesn’t work, auditors are bribed, we need to have a vision of what the audit process could be”(IC12 2010). Still even though the audit process was fraught with problems due to forgery and bribery, it was still seen as an essential part of the CARE Process. According to an ICTI CARE employee, a standardized audit process was the “only way we can account for and compare performance” (IC1 2010).

The following sections on standard setting and behaviour modification highlight the key conflicts under these two components and examine how they were linked to the corruption of the audit process.

#### Standard Setting

One of the main reasons that factories were resistant to the ICTI CARE Process was that some of its standards were very costly to implement. The costliest standard in the CARE Process was its policy on working hours and overtime which was based on local law. In China, these laws had become increasingly stringent. On paper at least, workers in China are entitled to collect over-time pay if they work more than 8 hours a day or more than 40 hours a week. The rate of compensation for overtime ranges from 150%-300% of normal working rates, with a maximum of 66 working hours per week. In addition to this, holiday entitlements varied from province to province, with some jurisdictions stipulating a five-day work week and others allowing for six. These laws however were never enforced.

The reason the working hours policy was so costly is that toys are a cyclical, fast moving consumer goods industry. Orders peak towards the Christmas period and shipment specifications change

frequently. To comply with the law and be certified by the CARE Process, factory managers must not only hire additional staff during peak periods (which was becoming more difficult as the labour market was increasingly selective) but they also had to pay existing staff significant amounts of overtime. For example some NGOs reported working hours as high as one hundred hours per week during periods of peak production (SACOM 2006). Factory owners often did not have the profit margins to pay this level of overtime. As one ICTI CARE employee explained “The pay issue is very important because you can have 4500 staff, and it ends up costing a lot of money. One factory paid out \$USD 300,000.00 to workers to stay compliant [with ICTI CARE]” (IC2 2010).

Factories were rarely confident or powerful enough that they could pass over-time costs on to their clients. As one auditor explained:

*“If one factory stands up and says I can comply but I need two weeks lead time and the unit cost will go up 2% that would be good, but on the other hand for this factory, there may be 20 that will say, yes we can do it and will be quiet... In the end it is about the price of a toy on a shelf” (IC139 2010)*

Neither were toy buyers readily willing to pay additional costs incurred by factories to pay for over-time; the costs of compliance to the CARE Process were infrequently a part of procurement discussions. As one executive implementing ICTI CARE explained:

*“While it is easy to blame factories for practices, buyers are no angels, for example with JIT [Just-In-Time Production], they have last minute changes; different colour orders and different volumes. If it is one of the hot toys of the year, then more production is needed. For the manufacturer, it is not in the vocabulary to say no, and it is also just a fact of JIT – toys are needed”. (IC46 2010)*

The pressure on factories to produce within tight time frames meant it was extremely challenging to comply with working hour requirements during peak production periods. Factories did not raise this as an issue in procurement conversations out of concern that buyers would simply change their orders to a different factory. High costs and buyer apathy were not the only explanation given as to why factories did not meet the working hours requirements of the ICTI CARE Process. In some cases, factories did not understand or were confused by the requirements of ICTI CARE. For example, one

buyer who worked closely with his suppliers explained “some factories don’t even know what is going on. They struggle with standards, they are not sure how to calculate things like wages”(IC8 2010). Another reason given for the inability of factories to meet working hours requirements was that factories failed to plan for or invest in productivity improvements. According to one former toy buyer:

*Purchasing practices are a problem but factories are to blame to some extent as well. Many factories in Asia have a different mentality to those in Europe, they don’t put systems in place and don’t invest in technology or efficiency. So production planning is unorganized. Factories are to blame as well because they do not invest in their own factories.(IC48 2010)*

Working hours and over-time pay was considered the key problem with ICTI standards even though there were different explanations as to the source of these problems. On other issues, which were relatively less costly to implement such as health and safety processes (wearing safety goggles, access to drinking water and so forth), ICTI CARE was a success as these measures were reported to have been widely implemented. Even NGOs which remained critical of the ICTI CARE Process recognized these successes. As one ICTI CARE Foundation employee explained “at the end of the day, ICTI certified factories are better than non-ICTI certified factories and the [NGO] reports show this”(IC1 2010).

The conflict over working hours in standard setting was linked to the corruption of the audit process in information gathering because the working hours requirements were unattainable for factories, either because of limited incentive or capacity to meet them. The focus of industry pressure was on getting toys produced within a short, fixed period. Social compliance was a secondary priority to buyers. Since factories could not meet the standards without the support of buyers, evading the audit was a logical step to take to maintain client contracts. The problems of working hours were therefore directly related to audit issues.

#### Behaviour Modification

The mechanism through which the ICTI CARE Process was enforced was the commitment of its buyers to purchase only CARE certified toys. This commitment was extremely successful in

motivating factories to adopt the CARE Process. As indicated in Chapter 2, after most of the large buyers committed to the programme, 50% of toy factories representing 90% of toy workers had signed up (Lin-Hi 2012).

Unfortunately, problems were in the implementation of this enforcement mechanism. The power of ICTI to withdraw certification from factories was a significant threat to factories. Interviewees consistently expressed that factories were afraid of losing their ICTI certification because they believed this would put them out of business. As one buyer put it: “It is a must for a toy vendor to get a certificate, if not, they are removed from order books, and this is a big incentive” (IC8 2010). Other were more negative about this approach; according to one auditor “If you are a toy factory, you need the ICTI Seal of Compliance, if you fall foul of ICTI, then you are out of business – this is a problem, this comply or die mentality.” (IC145 2010). Another auditor described factories as desperate to get the certificate: “If the factories could not comply, then no certificate so factories would do anything possible to get a certificate. The certificate is very black and white.”(IC139 2010). While the auditors were very critical of the tough enforcement approach for the CARE Process, an ICTI CARE Foundation employee saw things differently, arguing this approach was needed for factories to take the ICTI CARE Process seriously: “Factories would lose their business if they lost their certification and this happens with shops like [large retailer]. But this is how we get factories to work with us” (IC4 2010).

What made this enforcement mechanism so controversial was that communication between buyers, factories and the ICTI CARE Foundation was poor, generating mistrust. While the ICTI CARE Foundation felt it needed a powerful threat to pressure factories to work with them to improve compliance with the CARE Process, the intention of ICTI CARE was not to put factories out of business if they failed to meet its standards. For example, in 2007, it had introduced the Continuous Improvement Process to assist factories to develop in areas where they performed poorly. As one ICTI CARE Foundation employee put it:

*“Our normal line is we are here to protect the industry from itself and to ensure a level playing field. We do not want to cut corners and do not want brands to look rotten - so we need to work together, we do not want to kill you, but you have to be committed to progress.” (IC2 2010)*

The problem with this approach was that factories needed to be assured that buyers would not abandon them if they failed to meet the criteria of ICTI CARE. Unfortunately, toy buyers were not always willing to give this commitment because it meant taking some risks of their own. They had to be willing suspend orders from a factory if it refused to comply because they risked their reputation if they openly worked with factories that were failing to meet all the standards. One former employee of an American retailer explained:

*“We were one of the first to say yes we will work with factories who can’t comply. We could do this because we fell under the radar, we didn’t think it was that likely we would be targeted by the media. But for others the decision is really hard. To say you are working with a non-compliant factory just makes you a target” (IC48 2010)*

Therefore, in many cases toy buyers took the certification at face value. As one auditor described:

*“Retailer XYZ penalizes factories if they fail audits and then they are fined 30K USD. And Retailer 123 used to be strict, it would cancel an order of 5 million if there was non-compliance, you can see, they would just bribe an auditor and the problem gets worse – if you don’t have a seal, you can’t ship. It drives corruption.”(IC145 2010)*

Consequently, although the intention of the ICTI CARE Foundation was to work with factories to improve their performance, it could not consistently offer assurances that factories could retain business if they committed to improvement and were transparent about failures. The result was that factories interpreted non-compliance with ICTI as an existential threat to their business.

A related problem was that contact between factories, brands and the ICTI CARE Foundation was limited. This led each to question the motives of others. As the ICTI CARE Foundation became more aware of auditing inconsistencies, a default assumption of the Foundation was that factories were hiding something. This made the factories nervous. As one toy buyer explained:

*“When an audit is going on, the first thing that is on an auditors’ mind is to try and find a problem, so the factory is more comfortable when the brand steps in. But other brands say ‘no, we give up, it is not easy to approach CARE.’ This is a problem for factories.” (IC8 2010)*



Consequently, there was a high level of distrust between factories and the ICTI CARE Foundation which was hard to reconcile because toy buyers were often not willing to step in and mediate.

In summary, a key impediment to behaviour modification was the punitive nature of the enforcement mechanism of the ICTI CARE Process. There were no clear or consistent assurances that this enforcement mechanism would not be used in cases where factories simply did not have the competencies to meet the standards of the CARE Process. The high stakes of the ICTI CARE Process coupled with the uncertainty about whether violations would be harshly penalized combined with the willingness of auditors to accept bribes and relatively low costs of forgery made evasion of the audit attractive.

### Conflicts and Actor Positions

Table Seven summarises the key conflicts in the ICTI CARE Process and the positions that the main participants in the certification programme took in relation to these conflicts. The ICTI CARE Process was dominated by business actors. There was a significant level of polarization between different types of business actors over enforcement mechanisms. Positions within a single actor group also varied, with no dominant view emerging.

**Table 7 Conflicts in the ICTI CARE Process**

Group	Toy Brands	Retailers	Factories	CTA	ICTI Secretaria/ Foundation	Auditors	NGOs
<b>Information Gathering: Audit Evasion and Bribery</b>	May use mix of ICTI approved auditors and firm staff to manage direct liability – do not believe that ICTI audit is effective	May use mix of ICTI approved auditors and firm staff to manage direct liability	Frequently tries to cover up problems for audits	N/A	Third party auditors approved and verified by ICTI. Increasingly distrustful of factory reporting.	Complain that audit process is ineffective, too “black and white”	Do not have confidence in audits; publish reports on factory conditions and worker experience
<b>Standard Setting: Working Hours and compensation</b>	Attitudes vary	Attitudes vary.	Varies, but overall does not meet statutory requirements	N/A	Understands costs associated with compliance but sees working hours as a minimum standard which must be met	N/A	Believe all factories obligated to meet ICTI standards, criticize ICTI for failures
<b>Behaviour Modification: Overly-punitive sanctioning</b>	Varies, but transition to less punitive compliance system is risky and costly	Varies, but transition to less punitive compliance system is risky and costly	Fear of losing customer orders drives factories to cover compliance problems	N/A	Seeks but struggles to moderate between factories and buyers.	N/A	Largely absent from behaviour modification in the ICTI CARE Process, but continue to report on factories to name and shame ICTI CARE/brands

The tension between brands and factories in this case was critical. Factories were so concerned about losing certification and thus business that they were willing to go to great lengths to appear compliant with the ICTI CARE Process when in fact they were not. As was highlighted by IC139, due to the potential consequences factories were unwilling to disclose any problems related to compliance. Toy for their part were concerned about their reputations and so unlikely to maintain commercial relationships with non-compliant factories. Thus, although toy brands and factories were dependent on one another for the ICTI CARE Process to function, they had little motivation to

engage in a meaningful discussion about compliance issues. On the other hand, the ICTI CARE Foundation did have a stake in the ICTI CARE Process and wanted the programme to succeed. The Foundation was prepared to review the audit process after complaints had been levelled against it. While motivated to resolve the problem, it struggled in its position as mediator because it did not have well-established relationships with either the toy brands or factories. Furthermore, while ICTI CARE Foundation staff understood the challenges faced by toy factories struggling to comply with the ICTI CARE standards, ICTI CARE Foundation's own interest in the functioning of the audit process and the high level of corruption across toy factories created significant distrust. The ICTI CARE Foundation was neither fully authoritative nor impartial in its role as mediator.

In sum, while the ICTI CARE Process had the technical capacity to regulate, conflicts between different types of business actors and the limited capacity of the ICTI CARE Foundation to address them undermined how the ICTI CARE Process could be substantively implemented.

### [Conflict Management in the CARE Process](#)

This section revisits the conflicts in each regime component and examines how they were managed and seeks to answer whether the ICTI CARE Process remained sub-optimal or whether conflicts were addressed and substantive capacity to regulate developed over time.

### [Information Gathering](#)

The key breakdown in information gathering occurred in the audit process. Factories resisted by falsified documents and coached workers on what to say to appear compliant with the CARE Process. Failing this, factories bribed auditors to obtain certification by the ICTI CARE Foundation. Beginning in 2005, NGOs had raised alarms that these problems existed in their publications. In 2007, the ICTI CARE Foundation suspected there were problems with its own audit process because of the suspiciously high compliance rate recorded in audit reports.

The ICTI CARE Foundation turned to a local NGO which had been working on this issue. At its request, it conducted twenty verification audits at ICTI certified factories. The results confirmed that the factories were not meeting the CARE Process standards. The ICTI CARE Foundation responded

by launching an “intensive care process” (IC1 2010). This was a year-long set of consultations with stakeholders, including toy brands, factories, retailers, toy associations, industry experts and NGOs. As one person involved with the ICTI CARE Process explained, the consultations were intended to bring “all the stakeholders under one roof”(IC136 2010) so that the problems about the audit could be recognized and a consensus could be reached on how to resolve them.

As a result of the consultations, the ICTI CARE Foundation made two sets of reforms to the audit process. First, it clamped down on bribery and corruption of auditors. As one ICTI CARE Foundation employee explained, it was not difficult to get its accredited auditing firms to adopt a zero-tolerance approach to bribery because “auditors have another side of the business, testing, which they do not want to fall into disrepute. It happened that at one firm 23 people were fired over 6 weeks” (IC2 2010). Still, even with the support of its auditing firms, the ICTI CARE Foundation knew it could not guarantee that auditors would not accept bribes. The same ICTI CARE Foundation employee acknowledged “there are thousands of auditors though. These auditors that are fired, they go in as consultants to the factory but they are not allowed back into the circle of auditors which are accredited”(IC2 2010).

To underscore its commitment to cleaning up the process-each factory audit was introduced with a statement by the auditor on the seriousness of the offence of bribery and on the importance of transparency. All auditors were required to report it if they had been offered a bribe. In addition, these anti-bribery messages were communicated to factories through provincial toy associations in China.

The second set of reforms introduced by the ICTI CARE Foundation was the introduction of new oversight mechanisms to encourage factories to report honestly in their audits and to check whether auditors were accepting bribes. Some of the reforms adopted practices that had been recommended or used by NGOs. For example, in 2010 the ICTI CARE Foundation introduced the “ICP Helpline”, a toll-free number operated by an NGO, which factory workers could call if they had work-related

complaints or concerns. To promote the helpline, factories were required to post the number in factory canteens and distribute information cards. In cases where calls were related to grievances or serious compliance issues, calls were referred to the ICTI CARE Foundation, who mediated these conflicts. The Helpline was considered a success, fielding approximately 200 calls a month from workers who had questions or complaints. About ten percent of these calls were referred to the ICTI CARE Foundation for follow up. The process was considered by factory managers to "help the worker-management relationship to become more transparent and sustainable" and "increase the ways that workers and management can communicate"(ICTI CARE Foundation 2012).

Other types of oversight mechanisms were also introduced but their level of success was less clear. The audit itself became more sophisticated. New checks were introduced to expose information had been concealed. Auditors interviewed factory workers not only in a formal setting but outside of factory hours. Information obtained from interviews was crosschecked against information from local shops about factory activity. If factories were suspected of carrying out forbidden activities such as forcing over-time work, auditors would even go to the extent of overnight stake-outs.

The ICTI CARE Foundation increased its quality assurance checks of auditors. Quality assurance auditors regularly arrived un-announced at audit inspections to monitor how well auditors were carrying out their work. An unfortunate result was that these additional forms of oversight increased dis-trust between the ICTI CARE Foundation and auditors on the one hand and the factories on the other. In the quality assurance audit that I observed, both the auditors and ICTI CARE were convinced that the factory was hiding something and were preoccupied with trying to catch them covering something up. The auditors were immediately suspicious because things were "too good" (IC4 2010) because all but three employees were wearing masks. Furthermore, it appeared there were two factories in the vicinity which shared the same name, which made the auditors question whether the factory we were visiting was being supplied by the other. When we arrived at the factory three men were present who did not have business cards; the conclusion was these men

were consultants who were there to help the factory pass the audit. This type of evidence caused the auditors involved to search for ways that the factory was covering up its compliance issues. They were openly aggravated that they could not find a smoking gun. For example after completing interviews with employees, one auditor commented in front of management that factory staff were “too well trained” on the interview questionnaire (IC4 2010).

According to auditors who were interviewed, the effect of this style of audit was tenuous because factories who wanted to evade the audit were constantly adapting. As one auditor explained:

*“when there are underage workers and an auditor comes, they will play music and the workers then run for the backdoor. With ICTI we go with two auditors, one for the back and the front, so we catch them, but in one audit there was an underground tunnel for workers to escape. There is a lot of cunningness in this process.” (IC145 2010)*

Others complained that this approach necessarily pitted auditors against factories, even if auditors genuinely wanted to provide help to them. As another auditor lamented:

*“It is not true that the audit model does not work, the problem is that factories don’t want you there. We don’t want to be policemen, we want to be auditors, to find what people are doing and what doesn’t work, to help identify issues and actions to comply with local law. But instead we catch factories out rather than help, support and provide advice to improve.” (IC139 2010)*

A further challenge with these additional oversight mechanisms was that trust between factories and the ICTI CARE Foundation was marginalized. According to one buyer:

*“When an audit is going on, the first thing that is on an auditors’ mind is to try and find a problem, so the factory is more comfortable when the brand steps in. But other brands say no, we give up, it is not easy to approach CARE. This is a problem for factories.”(IC8 2010)*

To sum up, the ICTI CARE Foundation responded to audit failure with reforms to its audit process. Some of these reforms were more successful than others; the helpline was received positively by factories and NGOs, who were the most critical stakeholders in the Care Process. The audit reforms on the other hand created more problems in the relationship between ICTI CARE and factories and the additional steps taken did not yield much greater certainty of results.

While the ICTI CARE Foundation's response to the auditing failure did not fully resolve inconsistencies with the audit and sometimes may have even exacerbated them, the ICTI CARE Foundation responded to failures and adapted to them, first by investigating its audit process and acting on the results and next by introducing reforms to address the identified problems. This spirit of response and adaptation continued even after the audit reforms were described as a failure by some. For example, following criticisms of the audit reforms, the ICTI CARE Foundation began to reach out more systematically to toy factories through the Chinese toy associations by conducting surveys of its members. This was an indication that the Foundation continued to be responsive to complaints about the audit reforms.

### Standard Setting

The key issue causing conflict in standard setting was that standards were too high for most factories. Factories did not have the capacity to meet policies on working hours and wages without the support of buyers to implement an improvement plan. Factories were sent conflicting messages about whether compliance to the ICTI CARE Process was really a priority.

The consultations which took place in 2007 due to the auditing scandal caused the ICTI CARE Foundation to recognize that that factories could not meet ICTI standards because its working hour requirements were too stringent. According to an ICTI CARE Foundation Employee, "We worked with [an American CSR consultancy] in San Francisco. We realized while the ICTI CARE Process was a step in the right direction, we can always do better. Analyzing the problems of double books, we saw what we had asked for was very black and white; either you are in or you are out" (IC1 2010).

According to one auditor, the consultations helped to make public that "there are un-fixables, like the triple wage on a Sunday. This is where retailers are the culprit. A business cannot survive by paying this. And this is what [American brand] has embraced, they understand that you need to pay for social compliance. But how much? [American brand] can work this out because they have their own network of factories, but a discounter may have no idea of the costs, this is why the issue does not resolve itself" (IC145).

The CARE Foundation began to consider making standards more flexible to accommodate the difficulties that factories faced in terms of meeting working hours and overtime requirements. One problem was that working hours requirements were based on Chinese law. Consequently, the ICTI CARE Foundation needed the support of the Chinese Toy Association and the Chinese government to make any changes to a working hours policy that was less stringent than the legal standard.

Senior staff at the ICTI CARE Foundation had maintained an ongoing dialogue with the Chinese government through the Chinese Toy Association since the CARE Process was established. Thus, discussions about working hours standards consistently involved state input. According to one ICTI CARE Foundation employee the advice of the government was that they were “not particularly concerned about hours as long as workers were properly compensated” (IC2 2010).

The flexibility demonstrated by the Chinese government gave the ICTI CARE Foundation room to adapt its working hours requirements so they were more realistic for the operating environment of the toy industry, where during the peak season “there is no such thing as a 40 hour work week” (IC22 2010). In 2010, it introduced a graded certification with three different passing levels. Class ‘A’ factories went beyond the statutory over-time maximum no more than 12 weeks a year. Class ‘B’ factories did not go beyond an over-time limit of 72 hours per week on a normal basis; a figure that recognized the need for extensive over-time during the peak production season. Class ‘Conditional’ was reserved for factories who could not meet the requirements of the former two categories. Factories awarded a ‘B’ or ‘Conditional’ certification had a period of 12 months to improve their performance before facing any sanctions and would face some additional audits to ensure they were making progress towards their targets.

The new graded certification system was intended to reflect existing practices in the industry so that issues could be addressed more openly. As one ICTI CARE Foundation employee explained “[The working hours policy] is a moving goal post. We do not want to exclude people if they exceed and have an appropriate plan to bring this down” (IC2 2010). From the perspective of the ICTI CARE



Foundation, the graded certification could help to bring transparency to the audit because it removed the threat that companies would lose their certification and hence their customers if they were trying to meet the goal of a 66-hour work week.

Some viewed this reform cynically. As one auditor explained the graded certification system was meaningless because it was not likely that retailers would be willing to work with factories that did not have 'A' class certifications. From his perspective "really at the end [ICTI CARE] is pass or fail because retailers will not work with you otherwise" (IC145 2010). From an NGO perspective, the flexibility that the ICTI CARE Foundation had introduced through the classification system represented a watering down of existing standards and were thus indicative of the fact that ICTI CARE was a weaker regulatory mechanism to government regulation. As one NGO explained:

*I support the regulations of the ICTI but I do not fully support the content of the regulations. Many standards set by ICTI are actually lower than the labour laws of China, but they are at least better than the actual conditions. (IC42 2010)*

While there may be some validity to this criticism, nonetheless the ICTI CARE Foundation took steps to improve conditions by publicly identifying the key standards which were a source of friction in the certification and then by taking measures to adjust these standards so that factories would not be intimidated by the compliance goals of the CARE Process.

### Behaviour Modification

The previous section discussed how information gathering through the audit process was corrupted because factories knew that if they disclosed that they did not meet the standards for earning or keeping an ICTI CARE certification they risked losing significant contracts and might even be forced out of business.

From the factory perspective, the only incentive to comply with the CARE Process was the fact that compliance was needed to conduct business with multi-national buyers. On the other hand, the cost of full compliance was equally harsh. No financial compensation was offered which would ameliorate the expenses. As stated previously, if factories tried to raise prices to cover the costs,

there was always a competitor willing to sell for less. Consequently, factories would often take elaborate steps to appear as though they complied even when this was not the case.

Changes to the behaviour modification aspects of ICTI CARE again resulted from the 2007-8 consultations of the ICTI CARE Process with its stakeholders. The major challenge for the ICTI CARE Foundation was to persuade brands and factories to work transparently and productively together. The CARE Foundation depended on toy buyers to demonstrate their commitment to enforce the CARE Process and to assure factories that they would not be immediately penalized if they could not comply with the working hours aspects of the certification scheme. Factories on the other hand and needed to be persuaded that the value of the CARE Process was not simply a license to trade.

As discussed in the previous section, one of the main stumbling blocks for the ICTI CARE Foundation was that trust between ICTI CARE and factories was limited.

The ICTI CARE Foundation addressed this problem by investing in outreach programmes = to improve communication between ICTI CARE and factories. These projects included outreach seminars and the production of printed material that was accessible to managers. The Foundation also launched a survey in 2010 to provide an opportunity for factory managers to communicate anonymously about factory conditions and about their attitudes towards the CARE Process. The results of the survey were used by the Foundation to “figure out what is possible to be changed” (IC2 2010) to improve the auditing process for factories.

To make the CARE Process more palatable to factories, the ICTI CARE Foundation began to change the way that it communicated about its goals from focussing strictly on compliance (although this remained an explicitly important objective) to a more positive approach which identified potential benefits to the program such as improved employee retention and productivity improvement.

Factories were receptive to this approach because at the time there was a labour shortage in China and they could no longer rely on a steady replacement of workers. According to one ICTI CARE Foundation employee:

*With the labour shortage factories will need to improve their productivity and will have to invest money. This is a change for the business that many factories are not entirely willing to embrace. Change by the factory really depends on management commitment. There are those that want support and council and see the benefit to do it right – there is the potential to eliminate 35% turnover to 20% turnover; Some factories have staff turnover of 400 people per day. With decent social compliance and industrial engineering, there can be a big reduction. So there are major savings, but there can be major costs as well. (IC1 2010)*

The emphasis on productivity improvements (as opposed to compliance) was made through the Continuous Improvement Process which the ICTI CARE Foundation introduced following the 2007-8 consultations. The Continuous Improvement Process was designed to address the capacity constraints of factories who were willing but unable to comply with the requirements of the CARE Process. As one ICTI CARE Foundation employee described, the Continuous Improvement Process was intended to demonstrate ways the CARE Process could support factory operations: “CSR has been in the past has been auditing and monitoring, now there is a more balanced relationship. We help to set win-win relationships, try to find out the problem, communicate with the factory; if you actually want to improve, we can sort it out” (IC4 2010).

Through a partnership with the Chinese government and the German Technical Cooperation Agency, a German development agency, the ICTI CARE Foundation provided some training programmes that were funded or subsidized. However, for the most part, factories bore the costs of Continuous Improvement Process and were only prepared to undertake them if they performed poorly in the audit. Factories that did not have a clean audit record were asked to meet with the ICTI CARE Foundation to develop a training plan.

Ensuring that factories adhered to their training programmes depended on the support given by brands. According to one ICTI CARE Foundation employee:

*We need to have the brand and the retailer on the same page to support training. When there are concerns about the compliance status of the factory, from an audit or an NGO report, we have to come all together make an agreement. If they want to continue, they need a very solid improvement plan, to communicate a half or full year plan of training(IC4 2010)*

In other words, the primary motivation for factories to adopt a Continuous Improvement Process was not to achieve efficiency gains but to comply with its client’s expectations. Although the ICTI CARE Process made progress in encouraging factories to buy in to the program through improved communication channels and through marketing the ICTI CARE Process as commercially beneficial, the main motivation for factories to adopt training programmes continued to be the demand of their clients that they do so. However, the messages from clients was inconsistent. CARE Foundation personnel themselves acknowledged that commitment by toy brands to the ICTI CARE Process varied significantly from those who were strong and involved supported to others that provided “lip service” (IC2 2010).

**Table 8 Adaptation of the ICTI CARE Process**

<b>Conflict</b>	<b>Response</b>	<b>Outcome</b>
<b>Information Gathering: Audit Evasion and Bribery</b>	<ul style="list-style-type: none"> <li>• Clampdown on auditors</li> <li>• Anti-bribery messaging</li> <li>• Increased oversight: Whistleblowing hotlines and more sophisticated monitoring</li> </ul>	Mixed; whistleblowing initiative seen as success. Additional oversight mechanisms lead to more elaborate forms of cheating. Full clampdown on auditors seen as unrealistic due to size of industry.
<b>Standard Setting: Working Hours and compensation</b>	<ul style="list-style-type: none"> <li>• Flexibility in working hours requirements</li> </ul>	Mixed; seen as cosmetic change by some members of ICTI CARE Process and as evidence of watering down of state standards by activists. Flexibility also gives opportunity to factories to communicate about compliance challenges.
<b>Behaviour Modification: Overly-punitive sanctioning</b>	<ul style="list-style-type: none"> <li>• Highlight commercially attractive aspects of ICTI CARE</li> <li>• Provide education and training</li> <li>• Improved communication and feedback mechanisms</li> </ul>	Mixed; ICTI CARE Foundation attempts to appeal to factories through a variety of mechanisms but dominant motivation of factories continues to be consumer demand and interest.

Table 8 outlines how the ICTI CARE Process responded to conflicts across the three regime components. Changes to the ICTI CARE Process were facilitated by the ICTI CARE Foundation, which was responsive to the fact that standards were too high for most factories to meet. The Foundation also understood that while withdrawing certification could act as a powerful tool to persuade factories to improve their performance, the use of sanctions alone did not produce the desired results. They consequently tried to combine sanctions with incentives. While adjusting its approach to standard setting and behaviour modification the Process incorporated new techniques into

information gathering, although audits remained the primary tool, despite their weaknesses. Importantly, the ICTI CARE Foundation did not hesitate to work with NGOs to strengthen its information gathering and behaviour modification systems, even though NGOs were not formally included in the certification programme. This indicates there is more willingness among business organizations to work with NGOs than is assumed by the Governance Triangle.

The positions of toy brands and toy factories changed more slowly. The ICTI CARE Foundation struggled to convince either to invest more resources into compliance. The challenges faced by the CARE Foundation to persuade its members to change their positions are consistent with critiques of private business regulation offered by Shamir (2010) and O'Rourke (2003) who posit that the market does not allow businesses to make trade-offs with its commercial goals. Nevertheless, despite these hurdles the changes to the ICTI CARE Process were ultimately endorsed by its members and shows that business dominated transnational regulation does respond to conflict which leads to incremental but substantive improvements in regulatory capacity. In this case, the ICTI CARE Foundation was a key mobilizer of the response to conflict. Although it was a business organization, it had an interest in the successful implementation of the certification process and sought to better align the diverse interests within the industry to improve it. There is further evidence that the variation of interests and capabilities within actor categories plays a role in the transnational regulatory bargaining process.

## Conclusion: Evolution of Bargaining in the ICTI CARE Process

The ICTI CARE Process is an example of a business dominated system of transnational regulation which possesses the technical capacity to regulate across all three regulatory components. Despite the dominance of a single actor type in the ICTI CARE Process, the interests and capabilities of the business actors which participated was diverse and there was a high level of interdependency between them. The most substantial differences were between toy brands who enforced standards, toy factories who implemented them and the ICTI CARE Foundation, which administered the

certification. While the ICTI CARE Foundation had an interest in successfully implementing certification, toy brands were more concerned about managing their reputations than about substantive compliance. Toy factories did not have the capacity to meet the standards nor was it in their interest to rectify this because to do so was costly and could undermine their competitive position. These differences became clear when it was discovered that factories and auditors were operating in collusion with one another to falsify audits. These conflicts, which took place within only one actor category, limited how the ICTI CARE Process could be implemented substantively.

The ICTI CARE Foundation was the primary actor making adjustments to the regime to address the shortcomings in the CARE Process. As the Foundation depended on the cooperation of both toy brands and factories for regulation to be implemented it needed to address the key capacity constraints faced by toy factories as well as deficiencies in the audit process. The foundation sought closer relationships with toy brands and factories so that it could establish a stronger bargaining position when auditing inconsistencies were found. However, in doing this the ICTI CARE Foundation found itself in a challenging position because it had to convince brands and factories of the value of the ICTI CARE Process, which was not always obvious in commercial terms. The role of the ICTI CARE Foundation is important because it had an interest in the success of the certification programme and so took initiative to resolve conflict and develop regulatory capacity. Because it was so dependent upon factories and brands for certification to function, the Foundation initiated a new round of cooperative bargaining through the intensive care process.

This analysis reveals both a great diversity of and interdependency between actors within a single category. Regulatory capabilities were distributed across different business types. Motivations to regulate though generally weak, also varied among business actors. The existence of the ICTI CARE Foundation, whose mandate was to implement the ICTI CARE Process served to mediate conflicting business interests. Its position was especially unique because it did not have any commercial motivations despite being a business actor. The level of variety observed within a single actor

category in the ICTI CARE Process indicates that a greater level of disaggregation, which separates businesses across the supply chain and defines roles of industry associations, is needed to develop assumptions about the dynamics of bargaining in the implementation of transnational regulatory standards.

## Chapter Five: Evolution of the Harkin Engel Protocol

### Introduction

This chapter focuses on the evolution of the Harkin Engel Protocol. As with Chapter four, it applies a Regime Perspective to do so. The first section maps the organization of the Harkin Engel Protocol across information gathering, standard setting and behaviour modification to answer the question of whether business dominated systems of transnational regulation are necessarily sub-optimal. Next, this chapter studies how regulatory components are dynamically linked by examining conflicts in each component and their relationship with one another. This maps how conflicts played a role in constraining or enabling participants in the Protocol to regulate. Finally, it looks at the way conflicts were managed to answer the question of whether business-dominated regulatory systems remain sub-optimal or whether they develop capacity over time.

### Organization of the Harkin Engel Protocol

Orchestrated by an American Senator, the Harkin Engel Protocol brought a range of groups together to negotiate and implement the Protocol. Initially, the key organizations which participated in the development of the Harkin Engel Protocol were the chocolate industry's Global Industry Group which included Hershey, Mars, Archer Daniel Midlands, Cargill, Kraft, Ferrero, the Chocolate Manufacturer's Association and the World Cocoa Foundation. Tom Harkin's initiation of the Protocol brought many other organizations including the International Labour Organization, the National Consumers League, the Child Labour Coalition, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association and Free the Slaves. Apart from the ILO, which was a multilateral labour rights institution, these organizations were NGOs and unions who campaigned on international labour issues.

The Protocol itself also facilitated the creation of new organizations to implement the Protocol. The International Cocoa Initiative was founded in 2002 to fulfil a requirement that the GIG establish a joint foundation to research and combat child labour in cocoa growing. The Verification Working



Group and later the International Cocoa Verification Board were formed to verify the results of certification. As the Global Industry Group attempted to implement a system of industry-wide public certification, additional groups became involved in executing this goal; most importantly, the governments of Ghana and Côte d'Ivoire through their respective programmes on child labour, the National Programme on the Elimination of Child Labour in Cocoa and the *Système du Suivi de Travail des Enfants*. Another organization, the Payson Centre for International Development and Technology Transfer, was contracted by the Tom Harkin through the Department of Labor to oversee how the GIG was implementing the Protocol. Ultimately, in 2010 the Child Labour Cocoa Coordinating Group was formed to coordinate the work of the various groups that were working to certify and improve social conditions for cocoa producers.

One of the key challenges of the Harkin Engel Protocol was that when it was signed there was no consensus among its developers as to how certification should be defined or how it could be implemented. As a result, organizations that had signed the Protocol pursued their own definitions on certification in an uncoordinated way.

For example, as outlined in Chapter Three, the ILO used the Harkin Engel Protocol to promote its newly created West African Child Labor in Agriculture Programme. The West African Child Labor in Agriculture Programme had originally been developed to reduce rates of child labour across a range of agricultural sectors West Africa, however the announcement of the Harkin Engel Protocol caused the ILO to focus its attention specifically on cocoa production (International Labour Organization 2007). Although there was no specific provision in the Protocol for the Global Industry Group to support the West African Child Labor in Agriculture Programme, aspects of the programme appeared to be consistent with its goals. One important aspect of the West African Child Labor in Agriculture Programme was the Child Labour Monitoring System, an initiative designed to be implemented at the district-level and targeted at monitoring children, removing them from hazardous work and placing them in schools. The Global Issues Group agreed to provide some

funding to the West African Child Labor in Agriculture Programme programme on the basis that it “might be able to fulfil the remediation bit”(HP22 2010) of its certification commitments, but overall the programme was run independently of the Harkin Engel Protocol.

On the other hand, the Verification Working Group was set up by NGOs as a direct result of the Protocol. The Verification Working Group was led by the International Union of Food Workers and the National Consumers League, two NGOs that had advised Tom Harkin on negotiating the Protocol. The Verification Working Group claimed to be responsible for assuring “the integrity of the certification and monitoring system” (Athreya and Campbell 2006). By the account of one chocolate manufacturer, the terms of reference of the Verification Working Group were not formed by consensus and once it had been formed, it confronted the Global Issues Group saying “we are the VWG [Verification Working Group] and you will fund us” (HP23 2010). During the period that the Verification Working Group was funded by the Global Issues Group, between 2001 and 2006, the relationship between the two parties was adversarial. According to one Global Issues Group member, the Verification Working Group focused on publishing “scathing reports” (HP23 2010) about business failures to implement the Protocol and did not cooperate to set up a feasible certification programme. One key aspect of the disagreement between the Global Issues Group and the Verification Working Group was the fact the two groups had fundamentally opposing views about certification.

NGOs that worked with Tom Harkin were focused on definitions of certification that were consistent with programmes like Fairtrade. The Fairtrade model is a third-party certification mechanism where compliance is monitored on a co-op basis. From the NGO perspective, this model was entirely feasible and the only explanation for push-back from business was lack of will to tackle problems in their supply chains. As one campaign organization claimed “If the corporations really wanted to abolish child slavery and worker exploitation, they have the power to do so”(Global Exchange 2002). From the Global Issues Group’s perspective, the certification

model offered by Fairtrade was not feasible in the context of cocoa production. As one chocolate manufacturer argued “what good does Fairtrade actually do? The cooperative system does not work in West Africa because there is not a high level of trust among farmers. And even if premiums were paid out to farmers rather than collectives, the prices is so low, that it makes very little difference to their lives”(HP85 2001).

These fundamental differences in opinion led the Global Issues Group to withdraw funding of the Verification Working Group and to establish a new group, the International Cocoa Verification Board that had a mandate to oversee certification verification and consisted of NGOs, business and state organizations. Therefore, even on issues where there was mutual consensus in the Protocol such as that to pursue independent verification, organizations that had opposing views on how it should be implemented worked opportunistically to achieve independent goals.

The International Cocoa Initiative, which was set up in Geneva, had characteristics that were consistent with behaviour modification. The work of International Cocoa Initiative focused on out-reach projects, run by local NGOs and targeted at local communities and designed not only to raise awareness about child labour but also empower them to make decisions about how they wanted to improve economic development in their areas. Called Community Action Plans, these programmes led to engagements between community organizations and local government on education and infrastructure investment. Over time, the work of the International Cocoa Initiative was looked upon favourably by most groups that had participated in the development of the Protocol because the Community Action Plans appeared to be effective. One independent review indicated that in communities where programmes had taken place “most children are no longer involved in spraying chemicals in cocoa farms, and only carry water to the farm a day before spraying. They no longer carry heavy loads but help out according to their strength and have stopped removing parasitic plants or weeding large areas

of land.” (Guigue 2010) In addition to this, communities which had been in contact with the International Cocoa Initiative were also more likely to have made investments in education with fewer dropouts for both boys and girls.... and significantly improved school performance”(Guigue 2010).

Regardless of this success, International Cocoa Initiative staff were very careful to distance themselves from the Protocol. According to one International Cocoa Initiative staff member who described the relationship of the organization with the Harkin Engel Protocol:

*We are inspired by the Harkin Engel Protocol, however, there is no legal relationship, there is no contractual relationship, no funding relationship or any other formal relationship between the ICI [International Cocoa Initiative] and Senator Harkin and Congressman Engel and their offices or any of the people who feel that they have a stake in that. (HP5 2010)*

Consequently, even organizations which had direct links to the Protocol asserted independence from its explicit goals.

Coordination on the Harkin Engel Protocol resulted mainly from government participation. In 2005, the Global Issues Group began to explore how it could implement the Protocol in partnership with producer governments. Ghana had already been developing a policy response towards child labour in its agricultural sector based on pressures from the Protocol and its experience with the pilot of the ILO WACAP Programme (HP167 2011). This had resulted in the creation of the National Programme on the Elimination of Child Labour in Cocoa, overseen by the Ministry of Employment and Social Welfare. The Global Issues Group reached out to the National Programme on the Elimination of Child Labour in Cocoa to request that it lead in certification by carrying out national level surveys on labour, a proposal that the government accepted. In addition to leading the development and implementation of national labour surveys the National Programme on the Elimination of Child Labour in Cocoa eventually came to define how child labour was defined and appropriate programming on its reduction in Ghana. The comparable organization in Côte d’Ivoire was the

Système du Suivi de Travail des Enfants although in 2010 its programme was not as developed as the NPECLC.

The public portrayal of the partnership between the Global Issues Group and producer governments was that it was corrupt. For example, Christian Parenti, a journalist explained in an interview:

*...in several cases, we found examples of [farm] co-op members who had been illegally arrested. In this one case, on orders of Cargill [a cocoa processor], Cargill bribed police, port police, to drive into the interior and to seize these farmers, put them in jail until the rest of the co-op members could collect enough money to pay the debt. So this is — one, it's about getting money, but it's also about breaking the co-ops that might oppose — that might compete against the chocolate industry. (Goodman and Juan 2008)*

These types of concerns as well as the failure of the Global Issues Group to meet the original deadline of the Protocol, to implement a certification programme by 2005, prompted Tom Harkin to appropriate 4.3 million dollars to the Department of Labour so that it could hire an external organization, the Payson Centre for International Development to effectively duplicate the surveys that were being undertaken by producer governments and to oversee how the industry was implementing other aspects of the Protocol. From the time the Protocol was implemented, one staff member was given the full-time task to monitor and pressure the Global Issues Group to comply to the Protocol. Staff “used [Tom Harkin’s] track record on labour and connections to lobbyists as well as his connection to the Department of Labour to campaign and pressure” (HP84 2010) using tools such as the , the Trafficking Victims Protection Reauthorization Act gave the Department of Labor authority to place Ghana and Côte d’Ivoire onto a watch list of countries that produced goods with child labour. In this respect, the recruitment of the Payson Centre was an extension of this work.

The Payson Centre experience, of duplicating the surveys, offers another example of how organizations pursued independent goals under the Protocol. However, because the Payson Centre was tasked to oversee the implementation of the Protocol, it eventually developed into a clearinghouse because it collected data from business, government and NGO organizations about their contributions to and views about the Protocol. The Payson Centre itself did not serve to

coordinate the work of the various groups working on the Protocol and its participation in the Protocol was extremely controversial; one chocolate manufacturer complained that they “systematically ignored our activities” (HP64 2010) and a representative of state organization lamented that “we were only given a week to respond to the report. I was so angry” (HP167 2011) but it was nevertheless broadly used as a reference point to gauge activity which was being undertaken to implement the Protocol.

In 2010, nine years after the Harkin Engel Protocol was signed, a new framework was renegotiated at the instigation of Tom Harkin and the Department of Labor. Unlike in 2001, NGOs were excluded from negotiations and Ghana and Côte d’Ivoire were central participants. The 2010 framework introduced a coordinating body for the Protocol called the Child Labour Cocoa Coordinating Group, an administrative organization which was composed of the Ghanaian, Ivorian and American governments and the chocolate industry. Having agreed to a 70% reduction in child labour in cocoa growing by 2020, the Child Labour Cocoa Coordinating Group was tasked with “coordinating efforts between organizations that signed the 2010 Framework and assuring that projects and resources are coordinated and address priority needs” (United States Department of Labor 2015). The Child Labour Cocoa Coordinating Group is therefore the first organization created to manage the diverse groups which participated in the Protocol.

Table 9 on the following page provides an overview of the organization of the Protocol.

**Table 9: Organization of the Harkin Engel Protocol**

<b>Group</b>	<b>Information Gathering</b>	<b>Standard Setting</b>	<b>Behaviour Modification</b>
<b>Producer Governments</b>	Developing and carrying out national scale producer surveys. Implementing CLMS.	Setting national policy and coordinating national action plans	Coordinated/delegated to NGOs or other administrative departments
<b>Office of Tom Harkin</b>	Delegated to Department of Labor/ILO/Payson Centre	Negotiated 2001 and 2010 framework	“Enforce” Protocol by coordinating with NGOs and the DOL
<b>Payson Centre for International Development</b>	Duplicate government surveys; report on industry ‘compliance’ with the Protocol. Serves as clearinghouse on activities related to Protocol	N/A	N/A
<b>International Labour Organization</b>	Pilot Child Labour Monitoring System (CLMS)	ILO Convention 182 is foundation of Protocol	CLMS removes children from work and places them in schools
<b>International Cocoa Initiative</b>	N/A	N/A	Developed local programmes to build capacity in cocoa communities on issues related to labour and development
<b>Firms/ Global Industry Group</b>	Delegated to producer governments	Negotiated framework, participation on steering committees and governance bodies, defining the certification process	Delegated to ICI, NGOs
<b>NGOs- Participative</b>	N/A	Negotiated framework, participation on steering committees and governance bodies	N/A
<b>NGOs- Adversarial</b>	Monitor Industry, monitor cases of child trafficking	Market certification standards offered by certification providers.	Use of courts, media and other public campaigns
<b>NGOs- West Africa</b>	N/A	N/A	Delivery of intervention programmes to cocoa communities

From the point the Harkin Engel Protocol was signed in 2001 to 2010 when the Child Labour in Cocoa Coordinating Group was set up, participation in the Harkin Engel Protocol was contentious. In contrast to Alan Hassenfeld, who played a more minor role as the ICTI CARE Process evolved, Tom Harkin remained a prominent figure throughout the period studied, triggering action through the Department of Labor at points the chocolate industry appeared to be failing to adequately implement the Protocol, most notably by facilitating the Payson Centre to monitor how the Global Issues Group was implementing the agreement.

The other organizations that played a continuous role in the Protocol were the Global Industry Group, the ILO and Pragmatic and Adversarial NGOs. The Global Industry Group and Adversarial NGOs were particularly at odds with one another and were unable to agree on a process to monitor farming communities. The Global Industry Group was nevertheless able to identify NGOs that it could work with in both West Africa and the United States to implement different aspects of the Protocol. In this respect, NGOs appeared to fall into two roles in the Harkin Engel Protocol. Firstly, by taking part in what Hood et al (2001) refer to as the “content” of the Protocol and thus adding capacity to implement the agreement. Adversarial NGOs on the other hand continued to play a role in the “context” of the Protocol by advocating stronger standards and campaigning to pressure companies to do more to implement the Protocol. What made NGOs particularly influential in the context of the Protocol was that the lines between NGOs who conducted advocacy and those who implemented the agreement were sometimes blurred. The Verification Working Group for example played both an advocacy role as well as one in implementation of the verification framework. The challenge of doing this was that NGOs depended on funding from business and funding was eventually halted when the Global Industry Group determined their views were incompatible.

While the Child Labour Monitoring System was not formally part of the Protocol, the Protocol was based on ILO Convention 182 thus the objectives of the Protocol and the Child Labour Monitoring System overlapped which gave scope for the ILO to influence the Protocol. Because its participation in the Protocol was indirect, resulting from its expertise and authority on labour issues, the ILO’s influence in the Protocol was carried out through other actors such as Tom Harkin, as was seen in Chapter 3.

Two new actors which emerged as important over time were producer states and the International Cocoa Initiative. Producer states did most of the heavy lifting on information gathering and standard setting. While the role of producer states was also contentious because civil society actors in the United States expressed distrust of their intentions they were the only organization that participated



directly in all three components of the Protocol which gave them specific capacity to coordinate activities for the agreement. The International Cocoa Initiative on the other hand was developed specifically because of the Protocol. While its mandate was separate from that of certification and the organization chose to distance itself from the Protocol, it played a role in behaviour modification through its Community Action Plans.

Although the Harkin Engel Protocol was technically an industry-led transnational regulatory programme, capacity to implement it was distributed across all three actor categories. Businesses did not have capacity to implement most aspects of the Protocol and were either forced or pursued to coordinate with other actors to carry out regulatory activities. Based on the distribution of regulatory activities and levels of decision-making, the Harkin Engel Protocol seems easier to place on Zone 7 of the Governance Triangle, where all three actor types participate. The low levels of coordination between all organizations participating and the high levels of conflict also confirm the argument made by Abbott and Snidal (2009) that the costs of coordination between all three actor types are high. The next section focuses on how these conflicts affected how the Harkin Engel Protocol could be implemented.

## Conflicts in the Harkin Engel Protocol

This section examines whether the components of the Harkin Engel Protocol are dynamically linked by looking at the conflicts across the three components and their relationships to one another and examines how the broader participation of states and civil society actors in the Protocol changed the nature of the conflicts in the Protocol and affected its implementation. The key conflict in the Harkin Engel Protocol was that the two key groups which signed the Protocol, the Global Industry Group on the one hand and NGOs advising Tom Harkin on the other, could not agree on a certification methodology. While the Global Industry Group favoured an approach in which they delegated to national government to undertake national surveys that were representative but did not cover the entire cocoa sector, NGOs argued this approach was not stringent enough and that monitoring and

enforcement of the certification standards needed to be carried out at the local level. This section first describes how this problem was a part of the information gathering component of the Harkin Engel Protocol and goes on to assess whether and how the problem was related to standard setting and behaviour modification.

### Information Gathering

The Global Industry Group agreed to the Protocol before there was any credible evidence of how pervasive the Worst Forms of Labour was, what they were and where the practices were most common. There were wildly different estimates of how bad the situation really was, with NGOs frequently toting a figure of 90% that was quoted in the television documentary *Slavery: A Global Investigation* and business organizations playing this number down. NGOs and the media could easily bolster their case by dropping by a random farm close to Abidjan and documenting cases of unpaid migrant child workers. According to BBC journalist Humphrey Hawksley:

*I had thought that finding child labour would be difficult. I had talked to contacts, gathered phone numbers, spent hours of preparation. In the end, I needed none of it. After a 30 minutes' drive from our hotel in the city of Yammousoukrou along the main road to Sinfra, we turned into a village, drove through, down a dirt track, past a cocoa plantation and saw gangs of children coming towards us. (Hawksley 2002)*

Business organizations believed these drop-in inspections to be publicity stunts and did not give a general indication of conditions on farms across Côte d'Ivoire or Ghana. As one processor commented "most people grow responsible cocoa. But if you go with a video camera somewhere, you will find it."(HP173 2011)

The Global Industry Group made its commitment to developing a certification system contingent on the findings of national surveys which were being carried out by the International Institute for Tropical Agriculture. Designed originally to support the World Cocoa Foundation sponsored projects, the survey was focused on assessing agricultural conditions in West African farming communities but when the media interest in child labour began to reach the United States, the survey was expanded to include questions on labour-related topics. The findings of this survey were intended to provide a baseline that could inform the development of the certification system.

The results of the survey however became mired in controversy. The conclusions of the research were that that poverty and child labour was prevalent in the sector, the number of children who worked as trafficked labourers was limited to about two per cent of all child workers (International Institute for Tropical Agriculture 2002). Anita Sheth, of the NGO Save the Children, was especially vocal against these conclusions. Believing the survey under-reported the actual number of children trafficked, she attacked the survey's methodology:

*... [the survey] offers no comprehensive look at child trafficking practices. Interviews were conducted in the village centres and not in the remote rural settings where children are often employed to work. Had the study included the phenomenon of child trafficking and the complicated network of middlemen used in transacting children for sale, the study might have wanted to interview children working in these remote settings. Further, the study would also have been expanded to include considerations of the child labour supplier countries such as Mali and Burkina Faso and the children that had been repatriated from Côte d'Ivoire to Mali or Burkina Faso and/or intercepted and prevented from going into Côte d'Ivoire from Mali and Burkina Faso. These children are not only well known to [NGOs], but also to local governments...Simply put [the survey] did not understand the link between cross border child trafficking and child labour. (Sheth 2003) p.45*

NGOs such as Global Exchange and the International Labor Rights Forum, who had always been unsupportive of the Protocol but nevertheless had links to Tom Harkin, were quick to use this criticism as part of their campaigns against the industry, arguing that the study had “design flaws”(Athreya and Campbell 2006) and researchers “were not labour experts” (HP9 2010). This type of opposition to the results of the International Institute of Tropical Agriculture research meant that its findings were not seen as credible by a number of influential participants in the Protocol, including Tom Harkin. Therefore, the Institute of Tropical Agriculture research did not produce a broadly accepted benchmark from which the Global Issues Group could move forward.

One reason that some NGOs were so opposed to the International Institute of Tropical Agriculture surveys is that they promoted the Fairtrade system of monitoring, which was done on a cooperative basis and was thus far more intensive than the survey carried out by International Institute of Tropical Agriculture. For example, in a 2006 report which criticized the Global Issues Group's

approach to monitoring and certification, Global Exchange and the International Labor Rights Fund argued that:

*All cocoa industry stakeholders, be they importers, exporters, manufacturers, or retailers, should commit to purchasing five percent of their total cocoa purchases under Fairtrade Certified conditions, as defined by Fairtrade Labelling Organizations International (FLO). This level of five percent should be seen as a starting minimum. A sustained and growing commitment to Fairtrade Certified cocoa will help bring participating cocoa farmers an added degree of economic stability and a further incentive to grow and harvest their crops in accordance with core labor standards.* (International Labour Rights Forum 2006)

For industry groups, the idea of cooperative-level certification that was embedded in Fairtrade was unfeasible. Even in Côte d'Ivoire, whose market was more liberalized than Ghana's "exporters cannot buy beans from farmers and we need to rely on the [internal] supply chain" (HP85 2001) so the Global Issues Group did not really have a mechanism to set up this type of certification on a significant scale. Consequently, when it came to a coordinated form of monitoring, the Global Issues Group rejected outright the Fairtrade methodology.

An alternative to the International Institute of Tropical Agriculture survey and the Fairtrade approach was the ILO's Child Labour Monitoring System, which was piloted in 2002. While the Child Labour Monitoring System was spearheaded by the ILO, local governments were responsible for the programmes. For example, in Ghana, where the project was first piloted, the Child Labour Monitoring System was run by the National Programme for Elimination of Child Labor in Cocoa. The Child Labour Monitoring System had both a monitoring and a remediation component. It was designed to train monitors at the local level who were linked to district and national level services through a referral system. Children identified as "at risk" by the Child Labour Monitoring System could then be removed from hazardous places of work, rehabilitated and put into schools (International Labour Organization 2005). Although the Global Issues Group had reservations about the Child Labour Monitoring System due to the fact it focused on "putting children in school, not on preventing slavery" (HP22 2010), one reason the Child Labour Monitoring System was appealing to the Global Issues Group was that it was a public programme. The government's participation in

monitoring could eliminate competition between chocolate companies, who competed heavily on securing stable sources of supply; as a result of the ecological threats to cocoa, sources of good quality cocoa were a strategic trade secret for all businesses.

Nevertheless while the Global Issues Group developed a consensus view that the certification programme for the Protocol should be one “that would give knowledge to the state; to help formalize institutions.”(HP23 2011), the review of the pilot Child Labour Monitoring System was not promising. According to one industry association “the first time around in Ghana the ILO model had mixed results. There were high costs with the survey and there were issues about coordination”(HP9 2010). The approach of the Global Issues Group towards the Child Labour Monitoring System was that “we invested in this and want to see returns...but we began to have real doubts, we did a calculation of costs to scale up; this would be hundreds of millions of dollars. It was a path that could not get to where we needed to go”(HP23 2011). Consequently, even though the Global Issues Group saw the Child Labour Monitoring System as a more attractive approach to monitoring compared to the techniques of third party certification, the group concluded that it was not feasible to carry out the Child Labour Monitoring System on an industry-wide scale as was set out in the Protocol.

Due to the poor results of the pilot Child Labour Monitoring System, the Global Issues Group decided to terminate its sponsorship in 2005, instead opting to undertake national-level surveys to meet the requirements of the Protocol. With the help of the International Cocoa Initiative, the Global Issues Group engaged the support of the National Programme for Elimination of Child Labor in Cocoa in Ghana and the *Système du Suivi de Travail des Enfants* in Côte d’Ivoire to lead and implement national censuses on child labour in cocoa. Initially, the Verification Working Group, which had been heavily critical of the industry for “doing nothing” on the Protocol until 2005 (HP23 2010) appeared to support the surveys on the condition that surveys were verified by an independent third party (International Labour Rights Forum 2006). After a 2005 meeting in London, the Global Issues Group

believed that a plan had been agreed between producer governments, industry and the Verification Working Group and asked the group to draw up a proposal on verification. However, at this point relations between the Global Issues Group and the Verification Working Group began to unravel irreversibly.

Following the London meeting, the Verification Working Group responded to the Global Issues Group with a verification plan that excluded both business and government organizations from choosing an independent verifier. The Global Issues Group were alarmed by this, feeling “it was not right to choose a bunch of anti-industry people who had no interest to pick people to verify statistical data in an appropriate way”(HP23 2011). Believing the relationship with the Verification Working Group was at an impasse, the Global Issues Group terminated funding and sought the help of Verité, a US-based NGO that was more flexible in regard to the requests of the Global Issues Group in regards to verification, to help them establish a committee that would select independent verifiers for the national surveys.

The decision of the Global Issues Group to terminate funding for the Verification Working Group in 2005 caused considerable controversy, not only because they had withdrawn support from allies to Tom Harkin but also because until this point the Global Issues Group had taken very few steps to implement the certification requirements of the Protocol and this date represented the time that an industry-wide certification programme was meant to be implemented. In light of the resistance of the Global Issues Group to Fairtrade certification and its rejection of the Verification Working Group, the proposal of the industry to partner with producer governments was viewed cynically by several NGOs and in the press. For example, in response to the Global Issues Group proposal, one newspaper reported:

*Harkin and Engel recently admitted that the plan to eliminate slavery has failed, but they point out that industry has given them further assurances. Lynn Bragg, president of the Chocolate Manufacturers Association, says that the industry (with over \$14 billion sales annually in the U.S. alone) is giving over \$5 million a year for a certification system. This means monitoring, data analysis, and activities to address the worst forms of child labor in the Ivory Coast and Ghana, with a goal of covering*

*50 percent of the two countries' cocoa regions by 2008. Harkin and Engel might hope to see that cup of cocoa as half full, but corporate interests evidently see fit only to "address" the practices deemed most miserable in limited geographic portions of farmlands. That's not exactly a sweet thought. (Hall 2005)*

Although, according to this article, Tom Harkin publicly trusted that the Global Issues Group was taking steps to fulfil the Protocol, Harkin was under public pressure to demonstrate the Protocol was a success. To keep a check on the industry, as Chairman of the Senate Committee on Health, Labor, Education and Pension, Harkin succeeded to appropriate 4.3 million dollars to the Department of Labor, who awarded the Payson Centre for International Development a three-year contract to monitor the industry and effectively duplicate the national surveys in Côte d'Ivoire and Ghana.

Thus, five years after the Protocol was signed and after several types of monitoring mechanisms had been considered and rejected, there was still no consensus between the industry on one hand and Tom Harkin and his supporters on the other on methodologies to collect data on labour in cocoa production, nor were there shared points of view on whether, where and how the problem of child labour and forced labour existed. The views of the Global Industry Group and NGOs were diametrically opposed. However, businesses had a hard time side-stepping them because of the formal roles they assumed in the Protocol which had been facilitated by Tom Harkin. The Global Industry Group was eventually able to identify more pragmatic NGOs who were willing to work with them. Nevertheless, opposition to the Global Industry Group continued to be powerful due to Tom Harkin's interest in the Protocol. Tom Harkin's role in empowering Adversarial NGOs was not only significant, it also limited how participants in the Protocol could agree on a way to implement certification.

The following sections on standard setting and behaviour modification highlight the key conflicts under these two components and examine whether and how they were linked to the methodological controversies in information gathering.

## Standard Setting

Groups participating in the protocol had competing interests and goals. As the previous section discussed, the diverse interests of the participants in the Protocol led to conflicts over methodologies for collecting data. Standards in this case were effectively the principles on which data for certification should be collected, and just as with information gathering, industry groups and the NGOs which witnessed the Protocol were at odds with one another over the definition of these principles.

A key problem was that the Protocol itself did not define specific standards. The Protocol was based on ILO Convention 182, which in 2001 had not been fully implemented in Côte d'Ivoire or Ghana, so definitions of the worst forms of child labour, which was the core focus of the Convention, had not yet been finalized (Ministry of Employment and Social Welfare 2009p. 22). Likewise, no model existed for implementing the Convention; the ILO's pilot West African Child Labor in Agriculture Programme project had not yet been initiated at the time the Protocol was signed. Consequently, there was considerable scope for interpreting how ILO Convention 182 should be applied to certification. According to one industry participant in the Protocol:

*If you read the HEP, there is room for interpreting what certification is. It is just a challenge to create a mechanism which eliminates the problem. (HP85 2001)*

Because the Protocol had not established a consensus over standards when it was signed, industry groups and NGOs came to support two sets of standards for certifying cocoa which were at odds with one another. The Global Issues Group on the one hand proposed a model for certification that set a benchmark for reducing the worst forms of child labour which was to be derived from the national-level surveys it had planned in partnership with the governments of Côte d'Ivoire and Ghana. From the point of view of the Global Issues Group, the information gathered from the surveys could be used to structure programming and could also serve as basis for measuring future improvements. Reporting to the Payson Centre in 2007, the Global Issues Group described its standards for certification as "a transparent, credible, progressive process that reports on the



incidence of the worst forms of child labour and forced adult labour in a producing country's cocoa sector and on progress in reducing this incidence, with the goal of eliminating worst forms of child labour and forced adult labor from the sector" (GIG qtd. Payson Center for International Development and Technology Transfer 2007). The process of certification defined by the Global Issues Group came to be known as the "certification wheel" (HP32 2010).



Figure 1: GIG Certification Model<sup>25</sup>

The Global Issues Group had come to define and promote this certification process after the International Institute for Tropical Agriculture had published the controversial results of its benchmark survey. According to the Institute:

*The picture that emerges is of a sector with stagnant technology, low yields, and an increasing demand for unskilled workers trapped in a circle of poverty. Salaried child workers were most clearly trapped in a vicious circle. The majority of these children had never been to school and were earning subsistence wages, forced into this labor by economic circumstances.* (International Institute for Tropical Agriculture 2002)

<sup>25</sup> Taken from <http://responsiblecocoa.com/our-solutions/another-child-page/>

This conclusion, which portrayed the agricultural sector in West Africa as being affected by technological and economic problems, was consistent with the industry's experience in setting up the World Cocoa Foundation, where business groups had learned about the ecological and social consequences of agricultural expansionism and enabled chocolate companies to frame issues related to child labour into the sustainability agendas they had already developed. As one chocolate processor employee explained: "farms are getting older, yields are getting smaller and crops can be devastated by disease....we need to convince the younger generation that working on a cocoa farm provides a secure future."(HP42 2010)

Consequently, in addition to advocating an approach to certification that was based on benchmarking and target-setting, the GIG also supported the inclusion of measures such as farm productivity, crop health and income in its surveys.

NGOs believed the definition of certification offered by the Global Issues Group was inadequate and did not amount to a set of standards. In a public letter to Tom Harkin, the International Labor Rights Forum, the most vocal NGO opposing the Protocol, argued:

*The industry's proposed model suggests that certification simply means verifying the results of a census. In the case of cocoa, what the industry apparently is certifying are... a statistically valid and replicable process for identifying the incidence and causes of child labor. However, this certification "concept" will not provide assurances "that cocoa beans and their derivative products have been grown and/or processed without any of the worst forms of child labor (WFCL)," as was the stated intent behind the Harkin-Engel Protocol. To the contrary, considering the widespread incidence of the WFCL in cocoa production, the likely outcome of the industry's proposed cocoa "certification" will be to simply confirm that child labor is used in the production and processing of cocoa. (International Labor Rights Forum 2008)*

For many NGOs, the only credible standards for certification were those offered by third party organizations such as Fairtrade. As one NGO interviewed explained:

*The original version of the protocol called for product labelling, that would include tracing the cocoa supply and working with certain standards. So that means that standards would be developed and that the chocolate industry would work with suppliers to develop and implement them. And when those standards were not met, suppliers would face repercussions. But what we have found is that data gathering*

*has replaced certification.... we believe Fairtrade is the best because it includes a price premium for farmers and requires the formation of farm cooperatives. (HP31 2010)*

The critical dilemma between the certification process offered by the Global Issues Group and the views of detractors was that the industry definition of certification explicitly tolerated the worst forms of child labour whereas the exist third party models of certification did not. While the Global Issues Group had practical reasons for rejecting a zero-tolerance approach on the basis that it could not be enforced, media sympathy for the chocolate industry on this point was low. For example, in a radio debate between the Director of the World Cocoa Foundation and journalist Christian Parenti, Parenti argued: “you had no standards for your protocol. [The Payson Centre] found that you had made no progress on the ground. You have no case, really, to say that you’re trying.”(Parenti qtd.Goodman and Juan 2008).

Just as tensions between the Global Issues Group and NGOs spilled from problems of information gather to standard setting so too did conflicts about the ILO Child Labour Monitoring System. Although the primary reason the Global Issues Group withdrew its support of the ILO Child Labour Monitoring System was because its data collection methods were too expensive, one industry participant also explained that the Child Labour Monitoring System programme had goals which he believed conflicted with those of the Protocol. According to him the ILO Child Labour Monitoring System “was about putting people in schools, it didn’t have anything to do with directly reducing the worst forms of child labour” (HP23 2010).

Consequently, conflicts over standard setting were taking place in parallel to those in information gathering, thus when the Payson Centre was recruited to oversee the performance of the industry in meeting the goals of the Protocol, key tensions on standard setting had not been resolved.

Conflicts in standard setting were linked to information gathering: a model for certification could not be agreed without a consensus set of standards. A vocal set of NGOs who had established relationships with Tom Harkin’s staff Protocol were unwilling to accept any other set of standards than those that explicitly sanctioned the worst forms of child labour while business groups would

not accept such a framework due to concerns it could not be enforced. The ILO Child Labour Monitoring System, which was an alternative framework was also rejected, not only for its failures to meet information gathering goals but also for its emphasis on education, which the Global Issues Group saw as a distraction from the immediate aims of the Protocol.

Nevertheless, while there were links between the conflicts in information gathering and standard setting, these conflicts were occurring before any observable certification programme had been implemented. The fact that links between information gathering and standard setting existed before the certification programme was rolled out in any substantive way points to the conceptual challenges of distinguishing these two sets of activities. In this case, conflicts over information gathering and standard setting were overlapping, centring on the ambiguity of the 2001 agreement. It follows that the dynamics of this conflict were also based on disagreements between the Global Industry Group and a set of NGOs that had been empowered by Tom Harkin and his staff.

### Behaviour Modification

Two organizations played leading roles in behaviour modification for the Protocol. The first was the World Cocoa Foundation, the organization which had been established as a result of the Witches Broom crisis in the 1990s and the second was the International Cocoa Initiative, created as a direct result of the Protocol.

Both the World Cocoa Foundation and the International Cocoa Initiative offered economic development programmes that were targeted at local communities. The World Cocoa Foundation had introduced Farmer Field Schools, an agricultural training programme that focused on developing the skills of producers to increase yields and protect their crops from disease. Although the schools were originally designed to address problems that had arisen from the Witches Broom crisis, they were adapted to include a child labour component. According to one of the programme founders:

*The way the field schools work is that you identify a community that is receptive. The school is locally run and farmers appoint a facilitator who identifies what needs there are. The great thing about it is that it adapts over time, so within this*

*framework , we saw place for IPEC (ILO child labour programme) to create a curriculum for child labour. (HP9 2010)*

Unlike the World Cocoa Foundation, the mandate of the International Cocoa Initiative was focused entirely on addressing the worst forms of child labour in cocoa production. As Section 2 outlined, the International Cocoa Initiative developed outreach programmes in collaboration with local NGOs which focused on awareness raising about child labour issues but also supported cocoa growing communities in drafting and implementing social and economic development targets.

The key conflict in behaviour modification was that NGOs criticized the World Cocoa Foundation and the International Cocoa Initiative as insufficient. When the Protocol was first signed, Adversarial NGOs were critical these programmes were not adequately addressing child labour. According to Global Exchange, a vocal NGO which opposed the Protocol, World Cocoa Foundation programmes were not relevant because they did not address core problems of “free trade, structural adjustment, and corporate control” (Heim 2009) that they argued caused child labour. NGOs were specifically critical of World Cocoa Foundation programmes because the main thrust of the programmes were centred on objectives such as productivity and quality improvement which NGOs did not see as compatible with the goals of eliminating child labour. Christian Parenti, a journalist, went so far to criticize the educational aspects of the International Cocoa Initiative programme as a form of coercion:

*Farmers describe these efforts as more akin to intimidation than to education. "People are worried that America will not buy our cocoa anymore," says Julien Kra Yau, director of a farmers' cooperative in Thoui. "That would be very bad." Adds the co-op's treasurer, Raymond Kouasse Kouadio: "It would be a total catastrophe!" (Parenti 2008)*

Over time, assessments of the World Cocoa Foundation and International Cocoa Initiative programmes became more favourable. This was helped by the fact that influential organizations such as the Gates Foundation in the case of the WCF and the government of Ghana in the case of International Cocoa Initiative, began to endorse these approaches. As a result, NGOs stopped criticizing the International Cocoa Initiative and World Cocoa Foundation programmes directly and

complained instead about their funding shortfalls. Criticisms over lack of funding were re-enforced by research conducted by the Payson Centre, which in 2009 launched a database to track investment in all community development programmes that were operating in Côte d' Ivoire and Ghana. According to one pressure group, their research "could only find 3% of communities [in Côte d'Ivoire and Ghana] had received remediation" (HP84 2010).

Confusion about funding for development programmes was increased because the International Cocoa Initiative and World Cocoa Foundation programmes began to compete with other types of initiatives which were not funded directly by the Global Issues Group. Chocolate companies were eager to provide independent funding for projects to enhance the quality of their supply chains. For example, in 2009 one chocolate manufacturer independently adopted Fairtrade certification. According to one person involved in arranging the certification, support for Fairtrade diverted money away from the International Cocoa Initiative, which had been aiming to scale up its activities (HP55 2010). In addition to this, companies began reporting on these investments as evidence of their commitment to the Protocol, even though there was not necessarily a formal relationship between these programmes and the International Cocoa Initiative or the World Cocoa Foundation. Even the International Cocoa Initiative, which had been created as a direct result of the Protocol, had very weak links to the standard setting and information gathering components of the Protocol. The International Cocoa Initiative operated independently of the surveys and as a representative of the organization explained in Section 2, it distanced itself from other aspects of the Protocols. For example, initially the basis on which it chose to set up development programmes was a function of accessibility for external groups, so that it could earn more support from funders. As one International Cocoa Initiative employee explained:

*" Very early on we invited people, we had visits and so forth...almost development tourism, but by doing that , by people from these companies going there and seeing and listening and thinking in a way that they have not thought before because normally they see a village as a cocoa supply unit not as an area where children are not able to go to school or they are sick or there is no running water or what have you and once they make that connection, their supply chain person comes back and says*

*you know what guys our cocoa comes from some really awful places, we have to really think about this” (HP5 2010)*

The World Cocoa Foundation programmes were likewise not initially tied to the surveys and were delivered based on the demands of local communities. During this period of the Protocol, where there was considerable observed conflict across all three regime components, the conflicts in behavior modification were not linked in any meaningful way to information gathering or standard setting, however they were exacerbated by the same dynamics between NGOs and businesses observed in information gathering and behaviour modification.

**Table 10: Conflicts in the Harkin Engel Protocol**

	<b>Tom Harkin/ DOL</b>	<b>ILO</b>	<b>Firms/ Industry Groups</b>	<b>Producer Governments</b>	<b>Participatory NGOs</b>	<b>NGOs – West Africa</b>	<b>Adversarial NGOs</b>
<b>Information Gathering: Defining a monitoring and verification system</b>	Promotes third party certification, CLMS and the VWG	Promotes the CLMS	Introduces national-level surveys, disbands VWG and sets up ICVB in its place	Accept ownership of national surveys	Support verification of national surveys through ICVB	N/A	Promote third party private monitoring at the farm/collective level. Contest national surveys and ICVB
<b>Standard Setting: Defining certification and standards</b>	Promotes definitions offered by Fairtrade	N/A	Certification ‘wheel’: standards are based on the results of national surveys	Support certification ‘wheel’	Support certification ‘wheel’, sometimes with reservations	N/A	Favour norms-based standards offered by third party certification through mechanisms such as Fairtrade
<b>Behaviour Modification: Community Programme investments</b>	Pressure for maximum investments and lobby for resources for the ILO	N/A	Co-ordinated support for ICI; individual investments in community programmes are uneven and not well defined	Ghana supports ICI CAP programme through the NPECLC, not visible in pressure on industry for more funding	Varies but several interviewed expressed feeling business was contributing substantially	Varies	Industry is not investing enough in community programmes

Conflict in the Harkin Engel Protocol centred on differences between two different coalitions. In the first coalition was Tom Harkin, his staff, the Department of Labor and US-based NGOs. This coalition took a very narrow view of information gathering and standard setting and aggressively advocated for businesses to adopt Fairtrade standards for their cocoa supply chains. Businesses and exporter

governments, on the other hand, preferred looser definitions. Businesses opposed the notion of Fairtrade standards for practical reasons: this approach was neither cost-effective, nor could it in their view meet the goals of the Protocol. Exporting governments on the other hand, preferred to maintain control over the regulation of their supply chains. While the same US-based NGOs criticized the International Cocoa Initiative, conflicts in behaviour modification played out separately from those which focused on the conceptual problems associated with defining certification standards and monitoring processes. That the International Cocoa Initiative was established in Geneva and not in Washington may have helped to separate these conflicts because once the organization was set up, it had the freedom to get on with its work independent of events in Washington. Formal participation in the Protocol by Adversarial NGOs allowed Fairtrade certification to stay on the agenda. This limited how discussions about alternative ways to implement the Protocol could move forward. The involvement of Tom Harkin was especially important in these conflicts because he facilitated a greater role in the Protocol for Adversarial NGOs who had no interest in making trade-offs on their position. That businesses saw this position as untenable but were unable to block Adversarial NGOs entirely out of the bargaining process meant that very little advancements could be made to implement a certification programme.

## Conflict Management in the Harkin Engel Protocol

This section revisits the conflicts in each regime component and seeks to answer whether the Harkin Engel Protocol remained sub-optimal or whether participants in it addressed conflicts and developed regulatory capacity over time. The path towards conflict resolution was the same across all three regime components, occurring at the instigation of Tom Harkin after the Payson Centre had completed its work in 2010. Using evidence from Payson Centre reports and the fact that Côte d'Ivoire and Ghana had been entered onto the Department of Labour's Child Labour Watch List, Harkin's staff successfully pressured the Global Industry Group to negotiate a new agreement. The new agreement, called the Framework for Action, facilitated a consensus among the Global Industry



Group, Tom Harkin, the Department of Labour, the ILO and Côte d'Ivoire on the conceptual problems encountered across the three regime components in Assessment Two. Because the path of conflict resolution is the same across the three regime components, each section is limited to detailing the process and outcome. An overall discussion about changes to actor positions comes at the end of this section.

### Information Gathering

The key conflict in information gathering was the question of what type of methodology would be used to collect data and how it would be verified. Tom Harkin along with NGOs favoured multiple forms of data gathering including third party monitoring conducted at the co-operative level and the ILO Child Labour Monitoring System. After a pilot project with the ILO for the Child Labour Monitoring System, the Global Industry Group concluded that both approaches were unfeasible for regulation at the industry-level and began to develop national surveys in partnership with state-based organizations in Côte d'Ivoire and Ghana. Tensions also existed over this model because there were disagreements between the Global Issues Group and NGOs as to how results of the national surveys would be verified, as there was little trust between the industry, West African states and many NGOs that they intended to select verifiers for the surveys in good faith.

Because the Global Issues Group had abandoned its support for any alternative monitoring mechanisms and instead endorsed the national surveys and had disbanded the NGO dominated Verification Working Group to set up the International Cocoa Verification Board, a selection committee for the survey verifiers that included businesses and West African governments in addition to NGOs, Tom Harkin gave the mandate to the Payson Centre to monitor industry performance towards meeting the objectives of the Protocol, particularly its progress towards meeting the goal of industry-wide certification.

One of the most controversial tasks of the Payson Centre was to duplicate the national surveys which producer governments were undertaking. This was a signal of the limited trust that Tom

Harkin and NGOs in the United States had towards the government-led surveys and the International Cocoa Verification Board.

Frustrated at what they saw as over-reach by the Payson Centre, both Ghana and Côte d'Ivoire were offended by their oversight, feeling that the organization was challenging their authority as sovereign states. This sentiment is captured in a 2007 response by Côte d'Ivoire's *Système du Suivi de Travail des Enfants* to the Payson Centre about their survey and its first annual report:

*"the fact is that, while talking about cocoa farming certification, some of these efforts, especially those related to the baseline national surveys are our national duty as a sovereign state. So any initiative which is likely to question this sovereignty should be discussed ..."* (SSTE qtd. Payson Center for International Development and Technology Transfer 2007)

Yet, these fractured relationships slowly began to turn around. One matter that helped improve circumstances was that the International Cocoa Verification Board transparently selected two credible research organizations to verify the results of the surveys carried out by Ghana and Côte d'Ivoire during their 2007 harvest seasons. Overall<sup>26</sup>, the verification results demonstrated that Côte d'Ivoire and Ghana had carried out the surveys effectively. This was during a period when Côte d'Ivoire was mired in a civil war, making it "remarkable" (HP29 2010) that the Ivorian *Système du Suivi de Travail des Enfants* had accomplished so much. Furthermore, although it noted some methodological differences, Tulane's own surveys found "many similarities" (Payson Center for International Development and Technology Transfer 2008p.22) compared to the government-led analyses. This helped to re-enforced the credibility of the government-led surveys and the verification process as well as undermine opposition towards it.

Consequently, although the Payson's Centre's oversight had early on been opposed by business and producer governments, to some extent the Centre also served their interests by demonstrating that

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<sup>26</sup> International Cocoa Verification Board. (2010). "Considerations in Setting Future Directions for Eliminating WFCL and FAL in the Cocoa Sector." Retrieved June 30, 2014, from [https://www.verite.org/sites/default/files/images/Considerations\\_in\\_Setting\\_Future\\_Directions\\_for\\_Eliminating\\_WFCL\\_and\\_FAL\\_in\\_the\\_Cocoa\\_Sector.pdf](https://www.verite.org/sites/default/files/images/Considerations_in_Setting_Future_Directions_for_Eliminating_WFCL_and_FAL_in_the_Cocoa_Sector.pdf).

producer governments had been committed, competent and co-operative in implementing the national surveys.

Another productive change was that Ghana's National Programme on the Elimination of Child Labour in Cocoa worked with the ILO to reform the Child Labour Monitoring System so that it was cheaper to implement. The National Programme on the Elimination of Child Labour in Cocoa furthermore took control of the National Programme on the Elimination of Child Labour in Cocoa which was renamed to the Ghana Child Labour Monitoring System due to the fact the ILO was still supporting development and implementing aspects of the programme in both Ghana and Côte d'Ivoire (Payson Center for International Development and Technology Transfer 2010). This marked a point where the interests of the National Programme on the Elimination of Child Labour in Cocoa, and Tom Harkin, who was a supporter of the ILO programme, were compatible.

Even though some common ground had been established on areas such as verification of the national surveys, staff working for Tom Harkin still pressed for the industry to make financial greater contributions beyond the national surveys and the International Cocoa Initiative. For this purpose, the reports produced by the Payson centre were used as a lobbying tool by Harkin's office. According to one person involved:

*Tulane could only find 3% of communities had received remediation. The industry was not providing info and had a lot of time so we needed to address this. 2009 seemed like a great year because Côte d'Ivoire was on the [the Department of Labor's] watch list which they wanted to get off. That way the [Tom Harkin] could pressure them to cooperate on a programme which meant that industry would need to cooperate as well, or else they would look bad so the [Payson Centre] data, along with this put industry in a corner" (HP84 2010)*

Armed with the Payson data and the watch list, the Department of Labor issued a short discussion paper in 2010, suggesting reforms to the Protocol that would add to the existing financial contributions of the Global Issues Group and its members. One of the main recommendations of the paper was for wider adoption of third-party monitoring and certification; which was an idea outlined

in the final report published by the Payson Centre in 2010. Industry groups, who had long argued that this was not feasible, were critical. According to one chocolate manufacturer:

*...the solutions the [Payson Centre] report offered over stepped its boundaries by saying certification was the answer when it was not really the case...To get certification to work we need to create farmers organizations and that is proving to be incredibly difficult, even as governments get involved in this – how do you work with six hundred thousand farmers in Ghana? The only coop in Ghana is Kuapa Koko and you can be a member of the coop but never even meet a representative, or even sell to them. (HP23 2011)*

Nevertheless, the same chocolate manufacturer explained, Harkin's "office will not accept that chocolate is certified [with the national surveys alone] so will keep on pushing buttons to commit the industry to do more. I don't feel there is a way out" (HP23 2011). Thus, the persistent pressure by Tom Harkin led the Global Issues Group to negotiate a new agreement in 2010. As was the case in 2001, the agreement was negotiated over the summer with the goal of announcing it exactly nine years after the Protocol was signed on September 14, 2001.

A critical difference however was that the negotiations for the new agreement included state agencies from Côte d' Ivoire and Ghana, but excluded the NGOs which had advised Tom Harkin in 2001. This change was made on the basis that representation in decision-making should be based on financial contribution. According to the 2010 Framework, other interested groups were defined as stakeholders and would not take part in strategic decision-making:

*Within the context of governance, it is noted that there is a significant difference between "key stakeholders" (those with an interest in the issue) and "financial partners" (those assuming a direct responsibility for the management and ultimate success of the Framework of Action). The development of governance structures will include mechanisms for stakeholders to be informed of and to comment on the governance structures, while reserving direct and strategic decision making to the financial partners. (Department of Labor 2010)*

Accordingly, governance of the Framework Agreement was limited to Ghana, Côte d'Ivoire, the Department of Labor and the Global Issues Group.

Even though Tom Harkin's office had exerted considerable pressure on the Global Issues Group to make formal commitments to third party certification, the industry continued to resist, based on the argument that this type of monitoring was unfeasible for an industry-wide programme and the outcome drawn up in the Framework for Action made no mention of monitoring by independent third parties. Instead, it entrenched the national-level surveys, which were carried out by Côte d'Ivoire and Ghana as the key tool to measure how overall rates of child labour were improving on a five-year basis.

The Department of Labor and the industry<sup>27</sup> furthermore committed \$10 million and \$2 million respectively to support the ILO for further development of the Child Labour Monitoring System in Côte d'Ivoire and Ghana.

The Framework also introduced self-reporting obligations for all members of the Child Labor Cocoa Coordinating Group which was coordinated and compiled by the Department of Labor. For the members of the Global Issues Group this meant reporting on levels of financing for programmes that had been approved by the coordinating body. This was intended not only to improve accountability and transparency; an issue that was highly problematic in the period in which conflicts about information gathering were at their worst, but was also meant to facilitate coordination within and across Côte d'Ivoire and Ghana.

While the absence of third party monitoring mechanisms from the Framework for Action can be interpreted as a defeat by the Global Issues Group over NGO interests; some NGOs interviewed pointed out that the Protocol was a failure because it did not include this type of monitoring, it is not clear whether formalizing commitments to third party certification was really a priority for Tom Harkin's staff or whether their objectives were purely to improve the funding commitments of the industry. Regardless, working through the Department of Labor, Tom Harkin succeeded to reach a

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<sup>27</sup> Due to changes in membership and funding arrangements under the Framework, the GIG was renamed to the International Chocolate and Cocoa Industry

compromise with the Global Issues Group and producer governments on an approach to monitor farming communities but NGOs which had participated in the development of the original Protocol had been side-lined from negotiating the new agreement.

#### Standard Setting

Conflicts over standard setting centred on the view by NGOs that the Global Issues Group certification model did not have standards because there were no measures which defined whether a chocolate product had been produced using the worst forms of child labour or not. The Global Issues Group instead promoted the use of the national surveys as a baseline to make plans for future improvements. This approach was incorporated into the 2010 Framework, however the Framework adopted explicit child labour reduction targets, aiming to reducing the worst forms of child labour in Côte d'Ivoire and Ghana by 70% by 2020, using the Payson Centre's 2008-9 harvest survey as a baseline.

As described in the previous section, parties negotiating the 2010 Framework were able to arrive at this conclusion because NGOs that had been promoting more stringent certification standards were blocked from taking part in the agreement on the basis they were not financial contributors. While Tom Harkin may have preferred an outcome that obliged chocolate companies to adopt more stringent standards based on certification programmes such as Fairtrade, he was flexible enough to reach a consensus with the Global Issues Group, Ghana and Côte d'Ivoire that such standards would play no role in an industry framework and thus a compromise on target setting was reached.

#### Behaviour Modification

The key conflict in behaviour modification was that NGOs argued that Global Issues Group funding of support programmes for communities affected by child labour issues was insufficient from both programme design and funding standpoints. Both the International Cocoa Initiative and the World Cocoa Foundation, which were the two organizations that originally provided development programmes to cocoa growing communities, were challenged because their programmes were not

adequately child-centred. After these programmes began to receive positive assessments, industry groups were criticized for not funding these programmes and others enough.

The 2010 Framework Agreement addressed these issues by tightening definitions of what would legitimately be considered funding for community programmes and defined them as the removal of children from the worst forms of child labour, preventing children's involvement in the worst forms of child labour through increased access to education and the promotion of "sustainable livelihoods", defined as programmes that "seek to create long-lasting solutions to poverty by empowering their target population and addressing their overall well-being" (Department of Labor 2010).

The agreement also set specific investment targets for the industry; a floor was set at \$7 million to be disbursed over a five-year period to the ILO and existing industry partnerships such as the ICI and the WCF. The industry also agreed to the "possibility" of a further \$3 million of funding, although conditions were not specified. Because funding was to come from individual business donors and not directly from the Global Issues Group, industry funding was to be assessed by the Child Labor Cocoa Coordinating Group, made up of the Department of Labor, Ghana, Côte d'Ivoire, Ghana and an industry representative, to determine whether business sponsored programmes met the criteria for community investment that had been outlined in the Framework.

The way the Framework helped to resolve the ongoing behaviour modification conflicts was that it demarcated what constituted community programmes: industry targets were set in funding terms and funding parameters were also defined. This was an important change because the Payson Centre had earlier defined industry contributions to the Protocol in terms of outreach to affected communities, which was a significantly more difficult target to achieve.

Another important aspect of the Framework was that it also began to make links between the ILO Child Labor Monitoring System and the community programming that the industry had committed to fund. According to one person representing an industry association, the Child Labor Monitoring

System operated at the community level, using data on school attendance and other local indicators so “the idea is that the CLMS can provide data on the worst performing communities so that they can be targeted [for programmes]” (HP64 2010). This type of linking, between surveys, reporting and community investment indicated that the Framework helped the Protocol to become more characteristic of a regulatory regime. Nevertheless, the actual implementation of the 2010 Framework is beyond the scope of this research so it is unclear whether linkages between the three regulatory components strengthened substantially after the agreement was signed.

Table 11 below summarizes how the Harkin Engel Protocol responded to conflict across the three regime components.

**Table 11 Adaptation of the Harkin Engel Protocol**

<b>Conflict</b>	<b>Response</b>	<b>Outcome</b>
<b>Information Gathering: Defining Monitoring Mechanisms</b>	Global Issues Group pressured by Tom Harkin/Department of Labor to negotiate a new agreement	ILO Child Labour Monitoring System and national surveys adopted. Farm/co-operative level monitoring is removed from agenda.
<b>Standard Setting: Defining Standards</b>	Global Issues Group pressured by Tom Harkin/Department of Labor to negotiate a new agreement	Reduction targets set based on 2008/9 Tulane surveys. Compliance-based standards are rejected.
<b>Behaviour Modification: Quality of programming and funding targets</b>	Global Issues Group pressured by Tom Harkin/Department of Labor to negotiate a new agreement	Funding targets established. Clearer definitions of fundable projects and governing body (Child Labour in Cocoa Coordinating Group) set up to assess industry submissions. First attempts to link programming to Child Labour Monitoring System.

Tom Harkin’s staff and the Department of Labor acted as key bargaining agents who pushed for further commitments from business actors to implement the Harkin Engel Protocol. While these state-related organizations had a preference to push for more stringent standards as were being advanced by the NGOs they worked with more closely, they were more flexible in their willingness to compromise. The key tools to push for greater commitment by business were administrative: it was references to the Department of Labor’s Child Labor Watch List which ultimately convinced business groups that they should re-negotiate the Protocol. In this respect, state mechanisms drove businesses to engage in another round of bargaining on the Harking Engel Protocol.



In the new Framework Agreement of the Protocol, NGOs were also removed from having any formal roles in decision-making. The Child Labour in Cocoa Coordinating Group included only the ILO, government organizations and businesses. While the argument for this exclusion was that the administration of the new Framework Agreement was conditional upon the contribution of resources, the ongoing opposition of NGOs towards businesses was a key reason behind many impasses. NGOs who were opposed to the Protocol did not demonstrate any interest in changing their position, nor did international NGOs demonstrate they had any meaningful capabilities to help implement the Protocol. Although Tom Harkin and his staff were sympathetic to the position of these NGOs, he appeared to be more pragmatic in terms of a desire to reach an agreement which would be implemented. Consequently, he was willing to drop third-party certification as a demand and distance NGOs from direct participation in the agreement in exchange for formal financial commitments by companies to support established components of the certification process. As in the case of the ICTI CARE Process, Tom Harkin, an interested and central participant in the Protocol initiated a new bargaining process which led to incremental yet substantive changes in its organization. Unlike the ICTI CARE Process, this bargaining process was distributive and began with Tom Harkin and the Department of Labor making demands which the Global Industry Group opposed. However, the outcome that NGOs were edited out of formal bargaining helped to establish common goals between Tom Harkin, the Department of Labour, the ILO, producer governments and the Global Industry Group.

### Conclusion: Evolution of Bargaining in the Harkin Engel Protocol

Business organizations did not have capacity to implement the Harkin Engel Protocol. The Protocol fits into zone 7 of the Governance Triangle because states, businesses and NGOs all played formal roles in the certification system and there was a high level of interdependency between all three sets of actors. As expected, high levels of interdependency produced more conflict: NGOs and businesses had very different interpretations of how to define certification, yet they had to work together to develop a certification system.

Two coalitions began to organize around these conflicts. On one end was Tom Harkin, the Department of Labour and primarily American NGOs, on the other were business groups and importer governments. These coalitions which crossed over different actor categories and involved a process of three-way bargaining, where Adversarial NGOs had more power to advance their position as a result of Tom Harkin's support. The empowerment of Adversarial NGOs limited conceptual discussions about information gathering and standard setting and significantly slowed down implementation of the Protocol. The Governance Triangle recognizes that coordination between all three actor types is costly. This case shows how this can happen because of coalitions which form that can help to strengthen the position of actors which may not otherwise have power.

While the ICTI CARE Process highlighted the important divisions within the category of business actors, this case underscores differences between NGOs, particularly those which are primarily focused on opposition and campaigning and those which more pragmatically worked to implement regulation. In this case, divisions were also geographic: local NGOs demonstrated the most capabilities in terms of implementation and international NGOs were more focused on campaigning. This again underlines the need for more attention to be paid to intra-actor relationships in the transnational regulatory process.

Although the composition of actors and the nature of conflicts were different than the ICTI CARE Process, the process of conflict resolution nevertheless followed a similar pattern, where a central actor with an interest in successful implementation initiated a new bargaining process. In this case bargaining began as a distributive but the outcome reorganized coalitions, undermining the role of Adversarial NGOs and aligning Tom Harkin closer to the interests of the producer governments and the Global Industry Group.

## Chapter Six: Developing and Implementing Transnational Regulation: Actors and their Interactions

### Introduction

The focus of this thesis has been on identifying the interests, capacity and interactions of actors which participate in transnational regulation. The interactions between state and non-state actors in the transnational regulatory process is receiving a greater level attention in the literature (Djelic and Sahlin-Andersson 2006, Risse 2007, Keohane and Victor 2011, Orsini, Morin et al. 2013). This thesis builds on the framework of the Governance Triangle by Abbott and Snidal (2009), which provides a framework for studying the interactions between state and non-state actors in transnational regulation. It examines the emergence and evolution of two cases of transnational industry self-regulation in the toy and chocolate industries to explore whether its argument that regulation by business actors is necessarily sub-optimal. The first part of this chapter discusses three key findings from this analysis.

The analysis first finds that the assumption made by the Governance Triangle that bargaining between actors is a distributive process does not adequately describe the dynamics between actors and there are times when bargaining is cooperative. Taking this into account may help to identify the conditions under which coordination between actors is more likely.

Second, it finds that the Governance Triangle overlooks two types of interactions in the transnational bargaining process which have a substantial impact on the relative strength of an actors bargaining position. The first are intra-actor interactions: the relationships between different types of firms within an industry was significant to the way regulation could be integrated and how firms were motivated to build regulatory capacity. NGO capacity was similarly distributed across a distinct set of organizations and their interests sometimes competed. The way their capacity was linked was a factor which affected their bargaining positions. The second set of interactions are three-way, when states participate directly in bargaining. The role of state actors was most visible in

the Harkin Engel Protocol, where Tom Harkin strengthened the bargaining power of labour rights groups which may have not otherwise participated in the regulatory process.

Thirdly, by examining the evolution of transnational regulation over time, this study also finds that bargaining is an iterative process. Therefore, while business dominated regulatory programmes may begin as sub-optimal, it is possible for this to change over time when a central actor to the regulatory programme initiates this. These changes may nevertheless be incremental.

Capacity to implement transnational regulatory programmes and conflict which prevents the substantive implementation of standards can be driven from the diversity within actor categories and not only across them. Therefore, it is essential to develop more specific definitions of the actors who play a role in the transnational regulatory process. The case study approach has facilitated the identification of actors and sub actors precisely as well as their interests and capacities and how this shapes their interactions with others when developing and implementing transnational regulatory standards. The second part of this chapter presents the conclusions of this research about the actors identified and discussed in the first chapter.

The chapter concludes with a discussion of the theoretical contributions made by this thesis and identifies areas for further inquiry.

## Distributive and Cooperative Bargaining in Transnational Regulation

The Governance Triangle defines transnational bargaining as a distributive process, where one actor's loss is another's gain. Bargaining in the cases studied did not always materialize in this way.

There were examples of distributive bargaining in both cases. During the issue emergence stage of the ICTI CARE Process, business actors were the dominant players and NGOs had more limited power which prevented them from achieving their goals. The limitations on the influence of NGOs is illustrated by the failure of Boycott campaign. Because the NGOs lacked in depth knowledge of the issues faced by workers in Chinese toy factories and relied on inadequate research, business organizations easily discredited them and the campaign was a failure.

Another effort was made by NGOs after the Kader and Zhili factory fires. This campaign was more coherent, spearheaded by Asian workers organizations who had more expertise on the working conditions as Chinese toy factories. They coordinated with NGOs in Europe, the United States and other toy consuming countries to make more specific demands for the industry to adopt a code of conduct. Nonetheless, while they were able to get the attention of business which took some steps to improve conditions, they were mainly unsuccessful as their demands for independent monitoring were rejected. At the industry self-regulation stage of the Harkin Engel Protocol, bargaining was also distributive when Tom Harkin pressured chocolate companies to negotiate voluntary standards.

There were equally examples of cooperative bargaining across the cases. In the ICTI CARE Process this occurred between firms and began during the intervening stage when Hasbro and Mattel, perceived that an industry-wide code of conduct was preferable to the internal corporate codes they had implemented. Hasbro and Mattel knew they needed to establish a negotiation process that was inclusive of the interests of the Chinese factories on which they depended for their toy supply. The International Council of Toy Industries provided this forum and participants could negotiate standards based on shared interests. This involved trade-offs such as reference to local law on issues such as collective bargaining. However, overall negotiating framework was designed to protect the broad interests of the industry. From the factory side, this meant being subject to few social certification audits and from the perspective of toy brands this meant greater assurance that standards would be applied to their smaller suppliers.

Cooperative bargaining across actor categories was observed during the issue emergence stage of the Harkin Engel Protocol. This is when chocolate companies sought the support of government agencies, NGOs and academic institutions to define and develop a framework to address issues of ecological sustainability.

Examples of distributive bargaining tended to play out in the media more than the examples of cooperative bargaining. In the cases studied, it was easy to find articles and websites which

documented tensions and contradictions between different groups, however it was only by speaking to participants in the two regulatory programmes that the stories of cooperative bargaining emerged. This suggests that cooperative forms of bargaining may not necessarily be less frequent but they are less visible. The basis for cooperation appeared to be in the identification of a common problem or a point of shared interest. However, as will be discussed in the section of multinational companies and their motivation to take collective action, identifying the basis of a common problem and whether it can be shared across an entire industry or groups of actors is challenging.

### Actor Dynamics: Intra-actor and Three-way Bargaining Processes

The Governance Triangle emphasizes bargaining that takes place across actor categories. It underlines the bargaining between NGOs and Firms and the different interests between them. In the cases studied, two types of bargaining emerged which had a significant impact on the relative bargaining position of different actors.

The first was intra-actor bargaining. Bargaining between firms, particularly between multinational companies and their suppliers, was an important aspect of the ICTI CARE Process and affected how it could be implemented. The key area of conflict was the auditing process which factories evaded. The ICTI CARE Foundation believed it could address this problem by encouraging factories to disclose more candidly their struggles to comply without the fear of heavy penalties. The ICTI CARE Foundation however struggled to do this because they depended upon more involvement by toy brands, who were either unwilling to commit the resources or too concerned about the reputational risks of association with non-compliant factories to lend support. It was the variations of interest and the fragmentation of capacity between two different types of business actors, multinational companies and suppliers, which created the most obvious barriers to implementing certification in a substantive way. Another type of business actor, an industry association, tried to mediate between these problems.

The variations of the interests and capacity of NGOs also affected their bargaining positions. This was seen clearly in the contrast between the Boycott, a campaign with no links to local information, and the Toy Coalition, which connected local knowledge of Chinese factory work with the campaign capacity of international NGOs. It could also be seen in the Harkin Engel Protocol, where there was a division between NGOs which opposed the Global Industry Group certification model and those which agreed to work with businesses to implement it. This meant that the Global Industry Group could fulfil the requirements of the Protocol by including stakeholders in spite of significant opposition.

The three-way bargaining process between Firms, NGOs and States also shaped bargaining positions. This was most apparent in the Harkin Engel Protocol. The “State” in this case was a single United States senator, Tom Harkin, who leveraged the resources of the U.S. Department of Labor to push the industry for wider implementation of the Protocol. One of the key roles Harkin played in the bargaining process was to empower NGOs to increase their input into the certification process. The Harkin Engel Protocol emphasized the importance of stakeholder to decision-making so NGOs gained access to administrative roles such as membership in the International Verification Board. Through these roles some NGOs pursued an agenda that was hostile to business. Oversight tools introduced by Harkin such as the Payson Centre strengthened NGO opposition to certification and gave them a platform to advocate for competing standards. This led to heightened conflict, not only over the setting of standards but also over other matters such as methods of monitoring implementation. In some cases, the degree of conflict was so great that the parties could not work together.

The bargaining process is thus not just a two-way process which takes place between NGOs and Firms. Intra-actor and three-way bargaining also appears to be significant to the transnational regulatory process and can impact whether an issue reaches the regulatory agenda, how standards are set and whether and how transnational regulation is implemented. Both types of interaction merit more attention.

## The Evolution of Bargaining in Transnational Regulation

The Governance Triangle is used to study transnational regulation at single points in time. It is not intended to study the evolution of transnational regulation. By extending the Governance Triangle to examine the evolution of two cases of industry self-regulation from their inception, this study finds that the observations of the Governance Triangle are correct and that it is unlikely for a business-dominated regulatory scheme to have sufficient capacity to regulate in an optimal way. In the ICTI CARE Process, capacity to regulate was technically within the industry, however, it was limited in its capacity to regulate substantively. In the Harkin Engel Protocol, regulatory capacity was distributed and business organizations had little to no capacity to regulate without support from NGOs and state actors.

In both cases however, regulatory capacity did develop over time as a result of new bargaining processes that were initiated by central actors participating in each case. The ensuing changes were incremental but suggest that transnational bargaining is an iterative process that can take place as long as there are interested actors who the authority to facilitate it.

In the case of the ICTI CARE Process, the ICTI CARE Foundation was the primary driver of the bargaining process. It had an interest in resolving the problems associated with auditing and bribery in the auditing process. However, it depended upon its members, who were both toy brands and factories, to do this. Bargaining was a process of fact-finding and consensus-building. The parties came to agree that the root of the problem was the demanding standards and significant penalties associated with non-compliance. Changes to the ICTI CARE Process addressed the presenting problem of the audits: more controls were introduced. There was also recognition that the framework of the ICTI CARE Process needed to be changed: standards were made more flexible to accommodate the varying capabilities of factories to meet them and behaviour modification shifted from a punitive model to one that emphasized capacity building. These changes were incremental, not revolutionary. At the time of research there was still a high degree of audit evasion and varying levels of commitments from toy buyers to provide practical support. Still, with the support of its



members, the regulatory framework of the ICTI CARE Process changed to accommodate the different positions of those participating and to address the problems which were preventing substantive implementation of the certification programme.

In the case of the Harkin Engel Protocol, the response to conflict took on dimensions of distributive bargaining. Tom Harkin, his staff and the Department of Labor initiated a new bargaining process using Côte d'Ivoire's entry on the Child Labor Watch List as a threat. While they may have done so because they felt they had no choice, the Global Industry Group nonetheless engaged with Tom Harkin to re-negotiate the Protocol. Both parties had competing sets of demands, with the Department of Labor pushing the Global Industry Group to provide more financial commitments and the Global Issues Group resisting this. Much of the negotiation focussed on defining who should be included or excluded from decision-making in the new framework. Business organizations were successful in the negotiation process because producer governments with whom they were allied were included, while NGOs were left out.

Like the changes to the Care Process, adjustments to the Harkin Engel Protocol were incremental because they merely formalized a commitment by business to continue to provide resources to a program which it had already established. The exclusion of the NGOs however made it easier for the remaining parties to come together and identify shared interests such as child-labor reduction targets and funding goals. This may have helped to pave the way for cooperative bargaining to take place in the future.

Thus, even though many examples of transnational regulation are likely to be sub-optimal because they lack regulatory capacity or intrinsic motivation, they are dynamic systems and respond to conflict. The rate of change does not indicate that business-dominated regulatory programmes are likely to become optimal any time soon, however this research suggests that actors participating in transnational regulation are open to change and evolve in ways that improve regulatory capacity.

## Actors in Transnational Regulation

The interests and capacity of different actors to regulate is a crucial factor shaping the interaction between state and non-state actors in the transnational regulatory process. These interests and capacities are broadly construed by the governance triangle. This section summarizes what the case studies show about these actors and their roles and how this builds on existing knowledge of state and non-state actors in the regulatory process.

### Multinational Companies

In Chapter One, the motivation of multinational companies to regulate was discussed primarily in terms of reputational concerns. This was discussed both as a motivation for independent companies to regulate (Haufler 2001, Locke, Amengual et al. 2009) and as a basis for collective action (Rees 1996). Reputation appeared as a motivation in some cases. For example implementation of Mattel's code of conduct can be traced to a child-labour scandal in the American media. However, this factor was less significant than others in the cases studied. Although there were ways the "reputational commons" played a role in the ICTI CARE Process; for instance large toy brands were concerned about limiting their exposure to scandals, more functional concerns such as the desire to avoid the costs and complexity of multiple auditing schemes motivated multinational companies to pursue collective action.

Nevertheless, there was no one over-arching driver motivating multinational companies to adopt the ICTI CARE Process, underlining their diversity of interests of the various actors.

Of note, Alan Hassenfeld, the key champion of the certification system at times appealed to the industry on a moral basis. The moral dimension of whether businesses have moral interests and if so, how they are defined, has largely been ignored in the literature, most likely due to methodological challenges. Although morality was by no means a dominant theme in this research, the fact that Hassenfeld made moral calls for the industry to act suggests that although moral or ethical motivations may be subordinate to other business motivations for collective action, they exist and are worthy of attention.

The other way that toy brands were motivated to join the ICTI CARE Process was through industry pressure that was exerted by toy retailers and national toy associations. This is a type of competitive pressure that fits more with the view of a supplier-dominated supply chain described by Gereffi and Korzeniewicz than with the desire for the innovation or growth in product demand documented by Levy and Prakash (2003) and Hainemueller et al. (2011).

Reputational motivations were also not easily observed in the Harkin Engel Protocol. In the issue emergence period, with the depletion of cocoa yields, businesses identified what Ostrom (1990) defines as Common Pool Resource problem, in other words they had a shared interest to work together on a common problem, in this case greater ecological protection of cocoa farms. Later, industry willingness to negotiate the Protocol was driven entirely by the threat made by Tom Harkin to use the Agricultural Appropriations Bill to pressure the industry.

Drawing from the two cases, reputation does not appear to be the dominant driver for multinational companies to regulate, which is a surprising contrast to the expectations in the literature. There was also not a dominant motivation for multinational companies to join the ICTI CARE Process, even though it was a collective regulatory scheme. While the threat of regulation to motivate multinational companies to regulate is not surprising; as discussed in Chapter 1, Gunningham and Rees (1997) describe it as a key motivator for collective action, it is notable that domestic threats of regulation can help stimulate collective actions. Collective action based on shared business concerns about the environment has however received little attention.

From a capacity perspective, the view of multinational companies as providers of resources appeared to bear out. There was some evidence of complementarity between multinational companies and states discussed by O'Rourke (2006) and Amengual (2008). ICTI CARE Process factory audits supplemented the Chinese labour inspectorate which did not have adequate resources to conduct regular factory audits. The certification programme developed by the Global Industry

Group ultimately supported producer governments to undertake national level surveys of cocoa farms.

Multinational companies participating in the ICTI CARE Process were able to use their position as dominant buyers to pressure factories to adopt certification. In the Harkin Engel Protocol the links of multinational companies to producers was much weaker being mediated through government organizations. As discussed by Egels Zanden (2007) and Locke (2015), multinational companies were significantly constrained in how they could implement standards. In the case of the ICTI CARE Process there was a lack of knowledge or control over the many factories who were not key suppliers. With respect to the Harkin Engel Protocol, cocoa production was diffuse and out of the control of processors and manufacturers. The relationship between multinational companies and their suppliers was thus a significant factor shaping how multinational companies could diffuse and implement transnational regulatory standards.

### Suppliers

The role played by suppliers in the transnational regulatory process has to date not received significant attention even though they are critical participants tasked with implementing regulatory standards. As discussed in Chapter One, the literature has characterized standards imposed by multinationals upon their suppliers as a burden they can neither resist nor implement (Vogel 2009), however the relationship between multinational companies who impose standards and suppliers who implement them is also dependent upon institutional context.

The ICTI CARE Process illustrates how industry and institutional context shapes suppliers opposition towards transnational regulatory standards. At an institutional level, in China, suppliers operated in an environment marked by low levels of regulatory enforcement and workforce organization, A high tolerance for corruption<sup>28</sup> helped to systematize factory efforts to evade audits. From an industry

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<sup>28</sup> Regulatory oversight and worker organization are discussed in chapter two and four. There a number of studies which detail widespread corruption in China. One example is Wederman, A. (2004). The intensification of corruption in China. *The China Quarterly*, 180, 89 5-921.

perspective, suppliers felt unable to express complaints about the process due to competitive pressure and fear of loss of business to more compliant competitors.

The Harkin Engel Protocol on the other hand is illustrative of the way that institutional context can shape attitudes about the development of regulatory capacity. Cocoa growers were often inaccessible family-farms and very rarely had direct relationships with international cocoa traders. They were often illiterate and distrustful of organizing. They could not be integrated into a classical form of certification system. The question of how to effectively access these groups and encourage behaviour change was a significant source of tension between NGOs and businesses. Businesses advocated and ultimately succeeded in their view that they had a supporting role to play in facilitating the development of local and state infrastructure.

In summary, characterizing the MNC-supplier relationship as one based purely on hierarchical power dynamics is oversimplified. Institutional and industrial context mediates how MNCs can establish relationships with suppliers and shapes how they resist or cooperate to implement transnational regulatory standards.

### Industry Associations

Chapter One focussed its discussion of the literature about the role industry associations play in domestic regulatory programmes. Some of the observations at the domestic level appear to be relevant to transnational contexts as well. Rees (1997) comparison of the Institute of Nuclear Power Operators and the Chemical Industry Association in the United States draws many conclusions that appear to hold true in transnational contexts. As with the domestic industries studied by Rees, industry associations helped to establish common norms for their members: The establishment of the ICTI CARE Process was a drawn-out process to obtain consensus from all industry members on its principles. Once members of the Global Industry Group had signed the Protocol, they did not waiver from their commitments, even though there were significant conflicts over how to interpret them.

The ICTI CARE Process also played a significant administrative role, doing the legwork to assure that factories were certified and the audit process could be implemented.

Here a comparison between the ICTI CARE Process, where an infrastructure for international coordination was already established, and the Harkin Engel Protocol, where no such infrastructure existed, is extremely valuable. There was no obvious administrative body to implement the Harkin Engel Protocol with the result that there was considerable conflict over who should be involved in the decision-making and administration of the agreement. In contrast, the ICTI CARE Process was stable. Although the programme initially struggled to get support, conflicts over participation and decision-making were limited. The ICTI CARE Process may be unique to the extent that the entire industry was pre-organized under an international peak industry association. This structure proved to be crucial to coordinate regulation and facilitated greater acceptance of the standards.

Prakash and Potoski's (2007) work on club standards framework which discusses the willingness of businesses to make regulatory commitments in exchange for other types of benefits also appears relevant to the extent that toy companies began to adopt the ICTI CARE Process based on the membership conditions of national toy associations in Europe, North American and Australia.

However, the companies which adopted the ICTI CARE Process as a result of pressure by national industry associations tended to be smaller enterprises so national associations helped to raise awareness about the standards and the way they could implement the standards. This suggests that more was at play than a simple cost benefit analysis: toy associations played an instrumental role in disseminating norms.

There are other ways the literature on domestic industry associations was not consistent with the cases. The tendency for industry associations to reflect the interests of large businesses to the detriment of smaller ones, as described by Hutter and Jones (2007) was not as visible. While large businesses did use industry associations to advance their own agendas, the process was not one-sided nor did it necessarily impose additional costs on other businesses. In the ICTI CARE Process,

even though Mattel and Hasbro were the key proponents of industry-wide certification, decision-making was by consensus and they had to work very carefully to assure that the Chinese Toy Association accepted the certification programme. In the case of the Harkin Engel Protocol, the Global Industry Group excluded smaller businesses and so they were not bound by the agreement. The way that large businesses could push their agenda through industry associations was mediated by governance and decision-making processes and by the dependence of large businesses on other components of the supply chain.

Similarly, Rees (1997) observation that industry associations are limited in terms of their enforcement power when they do not have the support of the state was not as obvious in this study. The ICTI CARE Foundation was very powerful because it had the power to deny certification to toy factories which did not comply with its standards which could put factories out of business. However, this power turned out to be an empty one as toy factories chose to corrupt the audit process rather than to comply. Thus, although the Foundation possessed significant enforcement capabilities, in practice enforcement was not effective due to the lack of support of other actors. Had there been explicit state support with incumbent incentive and penalties, the result might have been different.

Mixed or conflicting motivations was another characteristic of industry associations identified by Gunningham and Rees (1997). This was not true of the cases studied. The ICTI CARE Foundation and the Global Industry Group were each established to address a specific issue connected to poor labour conditions in supply chains. As such these organizations possessed no conflicting mandates. There was no indication that anyone participating in either organization had interests that were at odds with the overall goals. In spite of this, these organizations were continually having to reconcile their commercial and political constraints with the social goals of regulation. Thus, while the motivations of industry associations in the cases were not compromised, they were drawn from a commercial context that was sometimes at odds with their social ambitions.

## NGOs

Keck and Sikkink (1999) have identified NGOs as a significant actor when working as networks. The cases provide more empirical data about these relationships and how they work and help to identify different categories of NGOs which are likely to coordinate.

From a capacity standpoint, there appeared to be a division between international NGOs and local ones. The capacity of international NGOs appeared to be centered on administration and standard setting, while local NGOs played more significant roles in information gathering and behaviour modification. From an interest standpoint, the division was between Adversarial and Pragmatic NGOs who had different interests in supporting regulation. The degree to which the capabilities and interests of these different types of NGOs was coordinated was significant to the ways that NGOs could bargain.

From the perspective of the relationship between international and local NGOs, international NGOs which were linked to local ones experienced more success in campaigns than ones that had no such links (although this was not necessarily the case; American NGOs were considerably more powerful when they linked to Tom Harkin). Nevertheless, even when campaigns were linked, their agenda-setting power was limited. In the ICTI CARE Process NGOs experienced varied success in pressuring for voluntary standards and in the Harkin Engel Protocol, investigative journalists played a more significant role.

In terms of the relationship between Adversarial and Pragmatic NGOs, Adversarial NGOs appeared to make up the “context” of regulation more so than the “content”; in other words, they represented external noise and interests in the regime and played at best a minor role in implementation. One of Braithwaite and Drahos (2000) most significant criticisms of NGOs is that although they can serve to check the interests of businesses, they are not equipped to deal with the administrative challenges of regulating. In this study, this shortcoming was evident not only with respect to the capabilities of adversarial NGOs, but was also a function of their interests. NGOs



which campaigned against business were generally distrustful of business and were sceptical about business qualms about the more ambitious regulatory choices they championed. This interest, to not settle for a regulatory standard they viewed as sub-optimal, appeared to be one of the greatest limitations of seriously impeded adversarial NGOs from participating directly in regulating. Still they played a role, albeit a narrow one in the process. Given there were more pragmatic NGOs which took on administrative responsibilities in each case, it is questionable whether it is necessary, and may even be counter-productive for adversarial NGOs to demonstrate more flexibility of interest.

In contrast, pragmatic NGOs were willing to work with business to implement the ICTI CARE Process and the Harkin Engel Protocol. To some extent this undermined the opposition of Adversarial NGOs because businesses could keep working to implement regulation in an inclusive way even if Adversarial NGOs opposed regulation.

While the distinction between the different capabilities and interests of NGOs has been made in the literature by Keck and Sikkink (1999), Hutter (2006) and Berliner and Prakash (2012), the cases illustrate the way these distinctions can affect the regulatory process.

## Unions

As discussed in Chapter One, there is not a meaningful distinction that is made between unions and NGOs in terms of the role that they play in the bargaining process. However, the nature of the cases studied, which focus on labour regulation and the context in which the cases emerged, of declining union power in many Western countries, call into question the type of role that unions play in transnational regulatory processes. Unions played marginal but visible roles in the two cases. This study finds there was a distinction between the roles played by international and local union organizations analogous to the distinction between international and local NGOs. The American Federation of Labor Organizations played a visible albeit ineffective campaign role during the issue emergence stage of the ICTI Care Process. The International Union of Food, Agricultural, Hotel,

Restaurant, Catering, Tobacco and Allied Workers was involved in negotiating and drafting the Harken Engel Protocol as well as participating in the International Cocoa Initiative.

In contrast, local unions were not involved in advocacy. China was an exceptional case because it has only one legally recognized labour union, the All-China Federation of Trade Unions. As a state organization, the All-China Federation did not organically represent the interests of workers. While worker representation through the Union was technically a requirement at Chinese toy factories, it initially did not appear to be the case that this form of representation could adequately serve the interests of labour. The role of the Federation was thus the most significant point of contention in drafting the ICTI CARE Process. However, there was some evidence that over time employee representation began to play more than just a ceremonial role at toy factories: employees at the ICTI CARE Foundation described with animation their experiences with elections and defended the function of employee representatives, stating that they could voice concerns about work-related issues such as health and safety. It is not clear whether the All-China Federation began initially as a weak institution and gradually developed or whether the interests of the state which it ultimately represented changed over time.

The Harkin Engel Protocol was also exceptional because the supply side of the industry, which was primarily made up of small-hold farmers, was not highly organized. According to one person interviewed, organization, particularly in the form of co-operatives, might even be viewed with suspicion by farmers. There was one active local union indirectly involved in the Protocol; the General Agricultural Workers Union in Ghana worked on farmer training and raising awareness to support Ghana's National Programme for the Elimination of Child Labour. However, in cocoa production, a lack of labour organization was not the most significant barrier for workers to access safe and fair workplace. National-level social and economic development issues took much higher precedence.

With international unions unable to access stronger bargaining tools such as striking, and having to resort to public campaigning, the declining power of unions in the context of free trade and globalization did appear to compromise their capabilities. The role of the All-China Federation really a state organization more than a true union was even weaker . It did not prevent workplace disasters or even give workers an outlet to protest them. In a context of global trade the capabilities of unions were also undermined because of a lack of over-lapping interests. While international unions were concerned with enhancing worker power through collective action, these interests did not appear to be immediately aligned with local labour interests.

### States

The state's role in the transnational regulatory process has not received sufficient attention. While the state is recognized by the Governance Triangle as an actor in the bargaining process, the precise nature of that role is vague and only offers an indication of what state actors do in the bargaining process. The role of the state is assumed to be limited because of the state's "limited direct role in bargaining" (Abbott and Snidal 2009p. 6). This study finds that regardless of whether state participation was direct, it was always significant.

The ICTI CARE Process is an example of a transnational regulatory programme that operated in the 'shadow of the state'. For example, in the ICTI CARE Process, the Chinese state was central in standard setting even though its role in the certification system was barely visible. The ICTI Code of Business Conduct was revised to be acceptable in the Chinese context. The ICTI CARE Foundation made changes to the Code only with the authorization Chinese state representatives. In other words, state interests directly shaped what the ICTI CARE Process could and could not do.

Representatives of the state can also play a direct role in bargaining and this can be influential. The Harkin Engel Protocol can be attributed to Tom Harkin, a single lawmaker who made use of the Agricultural Appropriations Bill to pressure the chocolate industry to self-regulate. State involvement in the development of the Harkin Engel Protocol was significant, sustained and direct. On the supply

side, chocolate manufacturers depended on the support of the key exporting countries, Ghana and Côte d'Ivoire, to develop and implement a regulatory framework. Thus, not only did states play a significant role in standard setting, in both cases, businesses deferred to the interests of exporting countries so that standards could be practicable.

Not only did representatives of the state play an instrumental role in the development of standards, they also mobilized state resources to advance their interests. For example, the Trafficking and Victims Protection Reauthorization Act, whose key disciplinary mechanism was the inclusion of names of countries and sectors on a list of goods where there was evidence that they had been produced with child labour, was used by the Department of Labor (at the behest of Tom Harkin and his staff) as bargaining chip to pressure companies to renegotiate the Protocol. The Department of Labor also channelled funding to the Payson Centre to monitor the implementation of the Protocol. Such direct involvement by representatives of the state underlines the extent to which state organizations can play instrumental roles in implementation even when they have no responsibility or jurisdiction. Although the Harkin Engel Protocol may represent an extreme case: the governance triangle points to very few examples of transnational regulation which features the direct involvement of state actors; it highlights the tools that state representatives have at their disposal that to bargain directly with non-state actors in the transnational regulatory process.

### Multilateral Organizations

The first chapter refers to Barnett and Finnemore's (2004) work on multilateral organizations as bureaucracies. The tension between the role of multilateral organizations as facilitators of international cooperation and their status as self-interested bureaucracies was observed in this study. The key multi-lateral organization observed in this study was the International Labour Organization, which played a central role in standard setting in both cases. The core ILO standards, developed in the 1990s were the key reference points for the development of both the ICTI CARE Process and the Harkin Engel Protocol. Significantly, ILO core standards were designed as a response to globalization. The core standards were a conscious attempt to create an international framework

for minimum labour standards in a context when trade-related labour disputes were becoming increasingly contentious. The standards were carefully designed to gain universal acceptance (Alston 2005). In both cases there were some conflicts over these standards, however they were broadly interpreted as norms which all parties could agree were acceptable. The ILO thus acted as a facilitator of transnational standard setting by offering a set of what could be agreed upon as shared interests-which other participating organizations, including NGOs, were not capable of providing .

Still, the ILO also expressed bureaucratic interests. This was most apparent in the Harkin Engel Protocol where ILO staff were direct participants. For example, ILO staff pushed a programmatic agenda, expanding the scope of its West African Commercial Agriculture Project to focus on cocoa so that it could maximize funding from chocolate companies. ILO staff also worked to insert themselves into elements of the Protocol, such as acting as official observers of the International Cocoa Initiative. which served to broaden their relevance and entrench themselves as global experts on labour rights.

## Missing Actors

### Individual Policy Entrepreneurs

Individual Policy Entrepreneurs are a category of actor that is almost entirely overlooked by the literature on transnational regulation. While institutional norms entrepreneurs are well recognized in the literature (Bartley 2007; Mattli and Woods 2009), apart from one study by Partzch (2016), the role played by individuals in the development of transnational standards is virtually ignored. This is a significant oversight because in both cases studied, individuals representing powerful organizations were instrumental in the establishment of regulation.

The regulatory literature is divided about the importance of individuals in the creation of regulatory standards. For example Baldwin, Scott et al. (1998) argue that individuals usually represent institutions when they act which means that institutions are the most significant unit of study. On the other hand, Braithwaite and Drahos (2000) have pointed to the influence of one consumer advocate, Ralph Nader in the development of a number of global regulatory frameworks. While the

key individuals, Alan Hassenfeld and Tom Harkin, who were instrumental in the actual development of industry programmes did represent powerful institutions, this study broke down the development of the regulation into three different stages and in doing this, it was apparent that without individual leadership industry self-regulation was unlikely. In the ICTI CARE Process, there was no business motivation to adopt certification until Alan Hassenfeld began to champion it and in the Harkin Engel Protocol, industry self-regulation was not even considered as a regulatory response until it was introduced by Senator Tom Harkin.

The public policy literature does recognize the importance of individuals in the policy process and there is a body of literature that looks at how individual entrepreneurs take advantage of “policy windows” to achieve policy goals. This work began in 1984 with Kingdon and Thurber’s work *Agendas, Alternatives and public policies*. The way this thesis was designed, so that it examine the development of regulation in stages, lends itself to this as it is possible to pinpoint where individuals step in and out of the regulatory process and to examine how they use tools available to them to push their agenda. Within this work, Mintrom and Norman’s (2009) typology of individual entrepreneurs seems to apply. Mintrom and Norman (2009) argue that while the success of entrepreneurs depends on policy windows to be open so they can take action, they argue that they also exhibit specific skills in taking advantage of opportunities. This includes: 1. social acuity: the perceptiveness to identify policy opportunity 2. defining problems: the ability to couch problems in ways that are politically salient 3. building teams: the affinity to establish coalitions and 4. leading by example: the ability to take risks. Alan Hassenfeld and Tom Harkin demonstrated these capabilities.

In the ICTI CARE Process Alan Hassenfeld stepped in to promote the certification system at a point that it could have failed, indicating that he followed the development of the ICTI CARE Process. Furthermore, while Hassenfeld made some moral appeals to peers, the ICTI CARE Process was consistently promoted in the industry as a way to harmonize standards and reduce costs. Appealing to competitors and suppliers in this way helped to position the certification as something that was

attractive even to manufacturers who had to bear most of its costs. Where Hassenfeld showed his greatest strengths was in building teams: he worked through national industry associations and the International Toy Council to establish a coalition to fund the ICTI CARE Process. He also led by example by investing his own money to support the ICTI CARE Process and announcing that his own company would migrate to the ICTI CARE Process.

In the Harkin Engel Protocol, Tom Harkin was able to transform an unrealistic piece of legislation, the Agricultural Appropriations Bill, into a voluntary form of regulation because he sensed that the chocolate industry felt that it was under siege and would be prepared to accept an alternative. Furthermore, by highlighting the lobbying tactics of some chocolate manufacturers, he built upon the negative public sentiment against chocolate companies to push them to negotiate. Although they were ill-informed he also had an established coalition with American and international labour rights groups, the Department of Labor and the ILO, who assisted him in negotiating the Protocol. From a risk-taking perspective, Senator Harkin was willing to use his weight to channel funding towards the Payson Centre, which for a time oversaw the implementation of the Protocol, although the extent to which this can be defined as risk-taking is debatable.

The above provides a simple analysis of the applicability of the public policy literature on individual entrepreneurship to the transnational regulatory sphere and underlines there is a well established path to pursue how individuals play a role in the development of transnational regulation which has the potential to shed much light on the way these types of regulatory programmes are established.

## Media

There is little written about the media as a regulatory actor: it is not mentioned in the governance triangle and when it is described in the context of transnational regulation, it is characterized as a vehicle which used by NGOs to spread messages to the public (Arts 2002, Alston 2005, Bernstein and Cashore 2007). However, the cases in this study highlight that investigative journalists in particular may have their own agenda and that the relationships between NGOs and the media flow is more

dynamic. In the Harkin Engel Protocol investigative journalists in the United Kingdom and the United State appeared before NGOs had become active on the question of trafficking in the cocoa sector and were instrumental in mobilizing a public response. At both the intervening period and industry self-regulation stages of the emergence of the Protocol, journalists, and not NGOs were responsible for identifying salient issue areas and mobilizing other actors, including Congressman Eliot Engel to take action. Even in the ICTI CARE Process, where NGOs had been actively campaigning on working conditions in Chinese toy factors, NGOs in the United States were initially drawn into the issue area of toys as a result of a 60 Minutes documentary.

The way that journalists independently shaped the regulatory agenda in both cases suggests that the media can and does play a role in transnational standard setting that is substantial enough that it should not be overlooked. Furthermore, journalists played a unique role compared to NGOs insofar as their involvement in the development of regulation was not sustained: typically, journalists “broke” stories and might write articles that supported campaigns, but they played less visible roles over time. Thus, although the media and NGOs worked in ways that were mutually beneficial, their capabilities and the nature of the role they played was distinct from NGOs and should be conceived as a discrete type of regulatory actor.

Table 12 updates of the summary table provided in Chapter 1. It includes an additional column which highlights key interactions in the transnational regulatory process. This table highlights some surprising findings. Firstly, the motivation of multinational companies to act collectively does not appear to be meaningfully driven by reputation and there are additional drivers which appear stronger. Among the most surprising reasons for collective action was the identification of Common Pool Resource Problems, a motivation which has not been identified in the literature on transnational regulation. Multinational companies are also highly dependent upon suppliers to implement regulatory standards and this shapes their relationships with each other. This is not a straightforward power relationship and it is shaped by institutional context. This table also points to



important distinctions between international and local, as well as Adversarial and Pragmatic NGOs, which shapes their interests and bargaining positions. It also highlights the important direct role the state plays in transnational regulation and points to new actors: individual policy entrepreneurs and the media to describe how they play a role in the transnational regulatory process.

**Table 12: Motivation, Capacity and Interactions between State and Non-State Actors**

Organization Type		Motivation to regulate	Regulatory Capacity	Key Interactions
Business	MNCs	*Reputation (weak on collective basis) *Efficiency *Moral (weak but unexplored) *Commercial/Industry Pressure *Identification of Common Pool Resource Problem *Domestic Regulatory threats	*Standard Setting *Resource provision – supplementing government capacity * Enforcement	Dependent upon suppliers to implement standards.
	Suppliers	Depends upon institutional context. Buyer demand is strong motivating factor to adopt but not to substantively implement.	Likely to have limited capacity to substantively implement. The ways this can be addressed depends upon institutional context	Varies
	Industry Associations	Direct interest in success of regulation when organization is designed with mandate to administer it	*Facilitation/Coordination *Diffusion of standards * Administration * Enforcement	Multinationals, SMEs, other trade associations, government, NGOs
NGOs	“Pragmatic” NGOs	Varies	Variation in capabilities of international NGOs (Administration) and local NGOs (Information Gathering, Behaviour Modification)	Multinationals, SMEs, industry associations
	“Adversarial” NGOs	Oppose business self regulation	Limited agenda setting, sustained campaign and oversight. Capabilities are enhanced through coordination with local NGOs and government support and can be undermined by pragmatic NGOs	Tend to operate as part of regime context
	Unions	Distinctions between international and local NGOs	Take on features of NGOs. Limited capacity for international coordination due to limited bargaining tools and incompatibility of agendas.	NGOs
State	State Organizations	Varies, but state resources can be used to express individual/organizational interests of lawmakers and state agencies	*Agenda Setting *Standard Setting *Oversight Capabilities can be exerted directly or indirectly in the transnational regulatory process	NGOs, Multinationals, Trade Associations, other domestic and international government organizations
	Multilateral Organizations	Shifts between facilitative and bureaucratic	Standard Setting	Governments, Multinationals, Trade Associations, NGOs
Undefined	Individuals	Varies	Identify policy windows to mobilize resources for policy change	Depends on organization individual represents
	Media	May pursue own agenda independent of NGOs	Agenda Setting	NGOs, mass publics

## Conclusion: Theoretical Contributions and Paths of Inquiry

This thesis is about the capacity and interests of state and non-state actors in the transnational regulatory process and how their interactions with each other strengthen or weaken their positions in transnational regulatory bargaining. Focusing on the emergence and evolution of two cases of industry self-regulation in the toy and chocolate industries, this thesis makes two sets of theoretical contributions.

The first contribution it makes is to the literature on transnational regulation, specifically the Governance Triangle. Drawing from the cases, there are three important theoretical findings. The first is that the process of distributive bargaining assumed by the Governance Triangle does not always occur and there are also examples of cooperative bargaining that take place between transnational regulatory actors. Cooperative bargaining is much less easily observed than instances of distributive bargaining, but there is no evidence from the cases suggesting that one type of bargaining is less common than the other. There is a body of literature which indicates that non-state actors are capable of defining mutual goals even when they have competing interests (Rees 1996, Vogel and Kagan 2004, Ostrom 1990). Determining the conditions under which this is possible is a path of further inquiry.

The second finding is in respect to the emphasis of the Governance Triangle on two-way interactions between Firms and NGOs. This thesis finds that two other types of interactions are equally, if not more important to the dynamics of the bargaining process. The first type of interaction is intra-actor bargaining. This was found to be the case within the categories of Firms and NGOs. Industry structure and the presence of mediating institutions such as industry associations was an important part of inter-firm interactions because it determined how business actors could set standards and how they could be implemented. The relationship between international and local, and Adversarial and Pragmatic NGOs also appeared important because it affected how different types of regulatory capacity could be linked and the strength of opposition NGOs could voice against industry self-regulation.

The second type of interaction which was important was three-ways, between Firms, NGOs and States. This was observable in the Harkin Engel Protocol, where direct participation by an individual legislator who had access and willingness to leverage state resources in the interest of American labour organizations served to embolden them. The power of these groups however gradually weakened as Senator Harkin supported the 2010 Framework for Action, which gave more strength to producer governments. Drawing from this case, the evolution of coalitions in the three-way appears to play a significant role in the bargaining process.

Thirdly, this thesis finds that the conclusion made by the Governance Triangle that transnational regulation, particularly when it is dominated by a single-actor group, is unlikely to produce regulation that serves the public interest. There are wide variations across industries in their technical capacity to regulate, however for regulation to be implemented substantively technical capacity was not sufficient.

Instead of studying transnational regulation as a single point in time, this thesis studies the evolution of transnational regulation. In doing so, it finds that the bargaining process can be iterative and that new bargaining processes lead to incremental but substantive changes in the capacity of a transnational programme to regulate. In these cases, the initiation of a new bargaining process appeared to be dependent upon the presence of an actor with sufficient interest and power to stimulate bargaining. Whether and how this process occurs in other cases of transnational regulation is another question which needs further research.

The second set of literature to which this thesis contributes is that on non-state actors in regulation. Surprisingly, in contradiction to the literature on industry self-regulation (Rees 1996), it finds that motivation to regulate based on a “reputational commons” was weak and there was no dominating pattern motivating multinational companies to agree to self-regulation. This reflects the diversity of interests that exist across business actors, particularly at the transnational level, but also suggests there many reasons that firms can identify and agree to regulate a transnational problem. It also

suggests that some forms industry self-regulation may not even be in response to a common problem but the result of the work of a subset of industry actors who push an agenda.

This study also provides empirical evidence which adds to Keck and Sikkink's (1999) framework which describes how NGOs conduct transnational campaigns through networks. The capabilities and interests of NGOs are fragmented and NGOs appear to be more able to promote an agenda if capacity is linked. This is dependent upon whether the interests of NGOs can be aligned.

States are considered peripheral figures in the development of transnational regulation (Abbott and Snidal 2009), with non-state actors operating in the 'shadow of the state' This thesis finds that state organizations can and do play a direct role in establishing and directing transnational regulatory programmes. Significantly, the Harkin Engel Protocol demonstrates how politicians can leverage resources to advance the agendas of their constituents. The United States may be exceptional because of the concentration of multinational companies headquartered in the country and the number of administrative mechanisms that are available to monitor and sanction companies, thus the differences between state administrative regimes and their relative power in multilateral bargaining may shape whether and how politicians and other government bureaucrats can access these resources and is an avenue of research.

Finally, this thesis identifies two types of regulatory actors that have not received attention in the literature on transnational regulation. The media was found to play a role in agenda-setting independently from NGOs, and the media appeared to mobilize NGOs to act on regulatory issues. This is surprising because the literature often characterizes the information flow between NGOs and the media in the reverse order (Arts 2002, Alston 2005, Bernstein and Cashore 2007). Individual policy entrepreneurs are also overlooked as a category of actor even though entrepreneurship is considered to be an important part of the transnational regulatory process (Bartley 2007, Mattli and Woods 2009). This study finds that individuals were significant in their role driving industry towards the adoption and implementation of collective standards and their interactions were similar to those

described in the literature on individual policy entrepreneurs. As such, there is a rich body of work to build on when investigating the roles of individual policy entrepreneurs in transnational regulatory processes.

This thesis also makes methodological and empirical contributions by applying frameworks which have been used to study public policy to transnational regulatory settings. The policy cycle literature was applied to studying the emergence of the two cases and helped to break down the development of both programmes into stages. The Regime Perspective was used to identify and map regulatory capacity and associated conflicts and how the ways actors addressed them led to regulatory change. This shows how they are relevant and can be adapted to study new policy contexts. Empirically, the detailed study of two regulatory regimes over a period of ten years or more sheds light on the transnational regulatory process by detailing interactions between actors which may otherwise be overlooked.

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## Appendix 1: Interviews

#	Code	Title	Organization Type
1	HP1	Office Manager	Industry Association
2	HP2	Programme Coordinator	Industry Association
3	HP3	Communications Coordinator	Industry Association
4	HP4	Programme Coordinator	Industry Association
5	HP5	Executive Director	Industry Association
6	HP6	Lobbyist	Industry
7	HP8	Industry Analyst	Industry
8	HP9	Programme Coordinator	Industry Association
9	HP12	Director	NGO
10	HP18	Environmental Manager	Industry
11	HP22	Director, Global Policy	Industry
12	HP23	Global Programmes Manager	Industry
13	HP29	Director	NGO
14	HP30	Director	University
15	HP32	Campaign Coordinator	NGO
16	HP41	Head of Government Relations	Industry
17	HP42	Director, CSR	Industry
18	HP49	Head of Programme Office	Government
19	HP55	Senior Vice President Head of Corporate Responsibility and Sustainability	Industry
20	HP60	Programme Director, Sustainable Cocoa	NGO
21	HP64	CSR Manager	Industry
22	HP76	CSR Manager	Industry
23	HP82	Programme Director	NGO
24	HP84	General Secretary	Government
25	HP85	Trader	Industry
26	HP113	President	Industry Association
27	HP123	Director	NGO
28	HP142	VP CSR	Industry
29	HP146	Executive Director	NGO
30	HP165	Head of Administration	NGO
31	HP167	Platform Coordinator	Government
32	HP173	Trader	Industry
33	HP175	President	NGO
34	IC1	President and CEO	Industry Association
35	IC2	Acting Director of Operations	Industry Association
36	IC4	Supervisor, Audit	Industry Association
37	IC8	Procurement Manager	Industry
38	IC12	Director, Social and Environmental Responsibility	Industry
39	IC22	Chairman	Industry Association
40	IC40	Director	NGO
41	IC42	President	NGO
42	IC43	Professor	University
43	IC48	Executive Director	Industry
44	IC49	Programme Director	Government
45	IC58	Training and Development Manager	Industry Association
46	IC61	CSR Manager	Industry Association
47	IC96	Operations Director	Industry
48	IC123	Vice Chairman	Industry
49	IC136	Senior Partner	Industry
50	IC139	Auditor	Industry
51	IC145	Auditor	Industry
52	IC153	CSR Manager	Industry
53	IC156	Campaign Research	Industry
54	IC157	Professor	University



