

Tabling Sustainable Commodities through Private Governance

Processes of Legitimization in the Roundtables on Sustainable
Palm Oil and Responsible Soy

Greetje Schouten

Utrecht, 2013

Cover design by Rutger Kuipers
Printed by Gildeprint Drukkerijen
ISBN 978-94-6108-495-8

Tabling Sustainable Commodities through Private Governance

Processes of Legitimization in the Roundtables on Sustainable Palm Oil and Responsible Soy

Private sturing van grondstoffen
Legitimeringsvraagstukken in partnerschappen voor de verduurzaming van palmolie en
soja
(met een samenvatting in het Nederlands)

PROEFSCHRIFT

ter verkrijging van de graad van doctor aan de Universiteit Utrecht op gezag van de rector
magnificus, prof. dr. G.J. van der Zwaan, ingevolge het besluit van het college voor
promoties in het openbaar te verdedigen
op maandag 4 november 2013 des ochtends te 10.30 uur

door

Antonia Margaretha Schouten
geboren op 5 juni 1982 te Utrecht

Promotoren:

Prof. dr. P. Glasbergen

Prof. dr. P. Leroy

Dit proefschrift werd mede mogelijk gemaakt met financiële steun van NWO-MAGW.

Contents

Preface and acknowledgements	9
1 Introduction	13
1.1 Background	13
1.2 Origins and challenges of private governance arrangements	14
1.3 Private governance debated	16
1.4 Private governance and democratic legitimacy	20
1.5 Research approach: studying processes of legitimization	23
1.5.1 Research questions	24
1.5.2 Empirical focus: Roundtables	26
1.5.3 Case studies	27
1.5.4 Data collection	28
1.6 Outline	28
Positioning Chapter 2	29
2 Private multi-stakeholder governance in the agricultural market place: an analysis of legitimization processes of the Roundtables on sustainable palm oil and responsible soy	31
2.1 The rise of partnerships in global agri-food chains	31
2.2 Operationalization of the question of legitimacy	34
2.3 Methodology	35
2.4 Inclusion of stakeholders in the process	36
2.5 Coming to an agreement	38
2.6 Compliance with the rule system	41
2.7 The acceptance of the Roundtables by third parties	43

2.8	Trust and collaborative advantage	45
2.9	The structure of the commodity chain	46
2.10	The type of lead firms	47
2.11	Government regulations	49
2.12	The political embedding of NGOs	50
2.13	Conclusions	50
	Positioning Chapter 3	55
3	Creating legitimacy in global private governance: the case of the Roundtable on sustainable palm oil	57
3.1	Introduction	57
3.2	Perspectives on the creation of legitimacy	59
3.3	The emergence of the RSPO – a short historical overview	62
3.4	Creating legitimacy: the perspective of legality	63
3.4.1	Rules of power	64
3.4.2	The RSPO and the wider policy arena	67
3.4.3	Conclusions on legality	69
3.5	Creating legitimacy: the perspective of moral justification	69
3.5.1	Morally justifying why they are the right actors	69
3.5.2	Morally justifying their goal	70
3.5.3	Conclusions on justification	71
3.6	Creating legitimacy: the perspective of consent and acceptance	72
3.6.1	The scope of the RSPO in the palm oil industry	72
3.6.2	Broader societal acceptance	73
3.6.3	Conclusions on consent and acceptance	74
3.6.4	Sum-up	75
3.7	Conclusion	75

Positioning Chapter 4	79
4 On the deliberative capacity of private multi-stakeholder governance: the Roundtables on responsible soy and sustainable palm oil	81
4.1 Introduction	81
4.2 Analyzing deliberative capacity: research strategy	84
4.2.1 Elements of deliberative capacity	84
4.2.2 Inclusiveness	84
4.2.3 Authenticity	85
4.2.4 Consequentiality	87
4.2.5 Case selection	88
4.2.6 Data collection	88
4.3 The Roundtable on responsible soy	89
4.3.1 Inclusiveness and the RTRS	89
4.3.2 Authenticity	95
4.3.3 Consequentiality	97
4.4 The Roundtable on sustainable palm oil	98
4.5 Conclusions	100
Positioning Chapter 5	103
5 Public and private regulation in interaction: Roundtables and the European Union competing over legitimacy in the biofuel sector	105
5.1 Introduction	105
5.2 Public-private institutional interaction: processes of legitimization	108
5.3 Case selection and data collection: the Roundtables on sustainable palm oil and responsible soy	110
5.4 Fragmentation and controversy in the issue-field of biofuels	112
5.5 Analyzing EU-RED's interactions with private schemes	114

5.5.1	Two Roundtables developing an annex	114
5.5.2	Newly emerging private schemes	119
5.6	Conclusion	125
6	Conclusions and reflections	127
6.1	Introduction	127
6.2	A variety of approaches towards analyzing processes of legitimization	128
6.3	Conceptualizing processes of legitimization in Roundtables	130
6.4	The instrument of certification	132
6.5	Democratic potential of private governance arrangements	134
6.6	Division of public and private responsibilities	136
6.7	Reflection on the future of Roundtables as private governance arrangements	137
	References	143
	Appendix	163
	Summary	169
	Samenvatting	179
	Curriculum Vitae	189

Preface and acknowledgements

The title of this dissertation can be interpreted in multiple ways. One meaning of tabling is ‘to place on the agenda’, while another meaning is quite the opposite – ‘to remove from consideration’ (Merriam-Webster online). These conflicting definitions symbolize the contradictory nature of Roundtables – the private governance arrangements analysed in this dissertation. On the one hand these arrangements are able to put the issue of sustainable agricultural commodities on the global agenda. On the other hand, however, these arrangements leave difficult and contentious sustainability issues out of their decision-making processes. This dissertation gives an account of the delicate balancing act of Roundtables in their quest for legitimacy.

Although writing a dissertation might seem like an individual endeavour, I am indebted to many people for their help and support. I would therefore like to take this opportunity to thank all of the people that contributed to this dissertation in their own personal way.

First and foremost I want to thank Pieter Glasbergen. Although his tutoring methods can at times be classified as unconventional, I am tremendously grateful that I was able to work with him as my supervisor. His high demands, sharp analyses and genuine involvement were indispensable for me in writing this dissertation. Not only do I want to thank him for his professional support, but also for the hospitality his wife Will and he provided throughout the past years. I would also like to thank my second supervisor, Pieter Leroy. He has been a stable and calm influence throughout the years. Later on in the process we started to work together more intensively, and I could benefit even more from his broad academic and societal knowledge.

This dissertation could not have been written without the cooperation of the many people I had the pleasure of interviewing during this research endeavour. As I have promised them anonymity, I cannot thank them here by name. However, I would like to show my appreciation to all of them for their openness and trust and for providing the information necessary to complete this research.

I feel extremely fortunate to be surrounded by many valuable friends and colleagues. Foremost, I would like to thank Verena Bitzer who was an invaluable part of my PhD trajectory. Thank you for being an inspiring example to look up to, an extremely loyal

colleague and a very dear friend. Even though you moved to Cape Town during the last months of working on this dissertation, you continued to be an enormous support. I would like to extend my thanks to Clare Barnes who would always find some of her scarce time to support me – either professionally or personally. Her energy and uplifting spirit make her a great colleague and friend.

During my PhD, I had the privilege to be part of a larger research programme: the Utrecht-Nijmegen Programme on Partnerships (UNPOP) which recently changed its name to MUNPOP to include Maastricht University. I would like to extend my thanks to the (M)UNPOP team, in particular to Ingrid Visseren, Mariette van Huijstee and Luli Pesqueira, for providing a friendly, inspiring and fertile research environment. A special thanks to Jordan Nikoloyuk for his contributions to the data collection for Chapters 2 and 3.

Additionally, I would like to thank all colleagues at the Environmental Governance group of Utrecht University. I would in particular like to thank Frank van Laerhoven, Roos den Uyl, Heleen Mees, Dries Hegger, Jelle Behagel, Wanda van Enst and Arnoud Smit for all the nice coffee breaks, drinks, dinners and challenging discussions. Furthermore, I would like to thank Peter Driessen, Walter Vermeulen, Hens Runhaar and Carel Dieperink for the possibilities to share ideas and train my academic skills by including me in their discussions. I would also like to thank the colleagues from the Environmental Sciences group, who were an important part of my working life over the past years. Furthermore, I would like to thank Annemarieke Otten, Ineke Bakker-Maas, and Harmina IJben-Wolters for their important supporting roles.

I consider myself very lucky to be able to continue my academic career at Wageningen University. I would like to thank Otto Hospes, Carolien Kroeze, Maja Slingerland and Peter Oosterveer for taking the leap of faith to hire me as a post-doc without having completed my dissertation. Furthermore, I would like to thank Sietze Vellema and Jeroen van Wijk for including me in their value chain track team of the Partnership Resource Centre. The research I am able to conduct with both of you is truly inspiring.

Furthermore, I would like to thank my friends for their support in my personal life. I hope that they have some idea of how important they are to me. Unfortunately, I cannot thank all of them here personally, but I would like to mention at least some of them by name: Anneke, Bas, Bart, Bernard, Chris, Eefje, Gilles, Hanneke, Inge, Joan, Joost, Mirjam en Tanja. I am very grateful and proud to be part of this crazy bunch of people.

Jan, Antje, Tjerk and Eefke, many thanks for your involvement and support throughout the development of this dissertation. Very much appreciated. I hope we can continue to support each other in the future.

Mama, papa, Niels, Job, Bernadet, Mees and Isis. Words cannot express my appreciation. You made me to who I am today. I am especially proud to have my two brothers as my 'paranimfen'. I (literally) look up to both of you.

Rutger, I don't even know where to begin to thank you. I feel extremely fortunate that I am able to share my life with such an open-minded, creative, and beautiful person.

1 Introduction

1.1 Background

Over the past few decades, non-state actors, such as nongovernmental organizations (NGOs) and businesses, increasingly gained prominence in global governance (van Kersbergen & van Waarden 2001, Falkner 2003, Bartley 2007, Biermann & Pattberg 2008, Abbott & Snidal 2009, Falkner 2011). These actors from the private sphere are, in different constellations, present in a wide variety of recently emerged governance arrangements that are taking up issues related to sustainable development. Some of these arrangements are initiated and controlled by a single actor or actor type (e.g., industry codes of conduct), while others are managed by two types of actors (e.g., partnerships between businesses and NGOs) and yet others are tripartite collaborations including state, market and civil society actors (e.g., public-private partnerships). Since the 1990s the rise of these new types of governance arrangements has accelerated and many predominantly private forms of governance have emerged (Abbott & Snidal 2009). These private governance arrangements have emerged in a variety of issue areas, including forestry (Cashore *et al.* 2004, Pattberg 2006, Klooster 2010), biofuels (Palmujoki 2009, van Dam *et al.* 2010), agricultural commodities (Nikoloyuk *et al.* 2010, Bitzer 2011), biodiversity (Visseren-Hamakers 2009), and mining (Grant & Taylor 2004, Meidinger 2006).

Although state actors and intergovernmental institutions still have a central position in international policymaking, non-state actors and new types of governance arrangements increasingly shape outcomes in global politics (Falkner 2011). Non-state actors are taking central positions in terms of rule-making, standard-setting, monitoring compliance, and enforcement (Fuchs *et al.* 2011, p. 353). Ruggie (2004) conceptualizes this development as a newly emerging 'global public domain', which is made up of state and non-state actors. He defines this new domain as: "an institutionalized arena of discourse, contestation, and action organized around the production of global public goods" (*ibid.*, p. 519).

The object of this dissertation is a specific form of private governance arrangement which emerged in the early 2000s in response to sustainability challenges regarding agricultural commodities: the so-called Roundtables. These Roundtables are global multi-stakeholder platforms that aim to promote and steer change of an entire agricultural commodity chain toward a more sustainable direction. Their decision-making processes include business

actors from all links in the commodity chain, developmental NGOs and environmental NGOs, while state actors are formally excluded from these decision-making processes. Roundtables use certification as their main instrument to ensure compliance with their systems of rules. Over the past decade, these Roundtables have proven to be influential players in governing agricultural commodities (Hospes *et al.* 2009, Djama *et al.* 2011, Silva-Castañeda 2012, Moura & Chaddad 2012).

The proliferation of private actors in governing issues regarding sustainable development has given rise to an extensive academic and political debate on how to value this shift. The normative and sometimes contradictory positions reflect the rather immature state of this debate and the limited empirical knowledge regarding the emergence of private governance arrangements, such as Roundtables.

This introductory chapter will first zoom in on the concept of private governance itself and subsequently on several debates in the literature regarding this phenomenon. The first debate takes place on a rather abstract level and concerns the division of responsibilities for public issues between public and private actors. The second debate focuses on the democratic potential of private governance arrangements. The third debate revolves around the appropriateness of the main instrument these arrangements use to enforce their regulation: certification. All these debates are related to the legitimacy of private governance. Therefore, using legitimacy as the core analytical concept of this dissertation will enable it to contribute to these three debates. This chapter will then shed light on the different conceptualizations of legitimacy in the academic literature. Based on this literature review, an additional conceptualization of legitimacy is proposed, the research questions are formulated, and a specific research methodology to tackle these questions is proposed. The empirical analyses of the dissertation are focused on Roundtables, which are further explained in the last part of this chapter.

1.2 Origins and challenges of private governance arrangements

Pattberg (2006, p. 591) defines private governance as “a form of socio-political steering in which private actors are directly involved in regulating- in the form of standards or more general normative guidance- the behavior of a distinct group of stakeholders”. While this dissertation mostly uses the term private governance, other terms found in the literature include: private-private partnerships (Fuchs *et al.* 2011), multi-stakeholder initiatives (MSIs) (Cheyons 2011, Moura & Chaddad 2012) non-state market driven (NMSD)

governance (Cashore 2002), global action networks (Glasbergen 2010a), transnational governance (Risse 2004, Dingwerth 2007, Beisheim & Dingwerth 2008, Hahn & Weidtmann 2012), non-state regulatory initiatives (NSRI's) (Reed 2012), intersectoral partnerships (Bitzer *et al.* 2008), and so on. Despite their different labels, private governance arrangements can be grouped into three broad categories: business self-regulation, civil (NGO) regulation, and joint business-NGO regulation. This dissertation focuses on the latter category. The term private governance refers to an ideal type: private and public types of regulation do not function in isolation, but are dependent on each other and influence each other (cf. Bernstein 2011).

In the academic literature a range of factors explaining the proliferation of private actors' roles in governance arrangements can be found. Many scholars point to the decreasing capacities of states to solve the various problems posed by processes of globalization (Bitzer 2012, p. 16). Others refer to their inability to provide a regulatory framework for intervening in the global market sphere (Tallontire 2007, Reed 2012). At the same time, firms aspire to promote themselves as socially and environmentally responsible actors (Tallontire 2007). Combined with the international growth and changing role of civil society organizations, this has led to a fundamental change in the relations between state, market, and civil society, and to the proliferation of private actors in global governance.

Private governance arrangements differ fundamentally from governance by nation-states, since the location and source of their authority is different in nature. According to Cashore (2002, p. 504), for private governance, "the market and its supply chain provide the institutional setting within which governing authority is granted and through which broadly based political struggles occur", while for traditional government regulation and for governance arrangements where responsibilities are divided between public and private actors (e.g. public-private partnerships), the ultimate authority still lies with the government. The source of authority in private governance arrangements rests on evaluation by external audiences instead of the monopoly on the legitimate use of force within their territories in the case of governance by state bodies (*ibid.*). In contrast to governments, private governance arrangements generally use the instrument of certification to implement their regulation, which is essentially voluntary and cannot be legally enforced.

Because of the specific character of private governance arrangements, they face several challenges regarding their capacity to govern an issue field. The first challenge pertains to their geographical scope. Many of these arrangements operate on a global level,

transcending national borders, while their rules are implemented locally, within a specific territorial area. Furthermore, Western-based NGOs and consumer-facing companies often initiate these arrangements, while the effects of their rules are often felt in Southern countries on a local (agricultural) production level. The large distance between these two audiences or constituencies may create certain tensions between ‘rulers’ and ‘ruled’. Moreover, upscaling from a niche market to a mainstream market might be problematic. “Mainstreaming entails a vertical (institutional) scaling up because mainstream markets comprise other stakeholders than niche markets” (Knorringa *et al.* 2011). The second challenge regards their substantial scope. Private governance arrangements in general do not address a specific sustainability problem, but rather focus on the sustainability of a sector. Therefore, they only address sustainability challenges if they are related to a specific commodity chain. An example of this is deforestation: private governance arrangements address deforestation as long as it is related to the sector which they aim to govern, but do not address the problem and root causes of deforestation itself. The same holds for other environmental and social problems. The third challenge is related to tensions that can arise from collaborations between NGOs and business actors. These actors come from different spheres of society – civil society and the market –, which “present contesting institutional demands, since they are guided by different core logics (e.g., a social versus an economic rationale)” (Van Huijstee *et al.* 2011). Fourth, it might be a challenge for private actors to regulate public issues; that is, issues that are of common interest. Private parties are not only accountable to the people affected by their regulations (as governments are), but corporations are also accountable to their shareholders, as are NGOs to their members. Therefore, private governance arrangements do not only aim to advance the public good, but also need to enlarge the private gains of the actors involved. Advancing both types of interests at the same time can cause tensions within private governance arrangements.

1.3 Private governance debated

In the academic literature one can distinguish between several debates regarding private governance, which address a range of questions on different levels and in different academic disciplines. The first debate centers on questions regarding the division of responsibilities for the public good between public and private actors. Approaches to regulation have changed since the post-Second World War era. This era was characterized by top down state regulation in which the state assumed full responsibility for various tasks, including political agenda setting, policy formulation, implementation, monitoring, and enforcement (Reed 2012, p. 21-22). Furthermore, international governmental

organizations were established, formulating soft law and recommendations that member states can adopt (ibid.). The emergence of private governance arrangements has brought about a change in the divisions of public and private responsibilities. Dubbink (2003, p.18) makes a distinction between public and private as denotations of specific *domains* of action and as denotations of specific kinds of *issues*. Domains refer to spheres of action in which the state has specific rights, duties, powers, liberties, and immunities to private actors and vice versa (Dubbink 2003, p. 18). Private issues, on the other hand, are issues that only concern the individual or private actors, while public issues are relevant to all members of society (ibid.). In the classical post-Second World War model, public actors are solely responsible for public issues, while private actors focus exclusively on private issues. In the development of private governance arrangements we can observe a shift whereby actors from the private domain assume responsibilities for public issues, including sustainability. In this sense the boundaries between public and private domains are becoming blurred.

The consequences of this shift for the liberal-democratic order are widely debated. On the one hand, this paradigm shift in the division of public and private responsibilities raises many positive expectations of the contribution of private governance arrangements to sustainable development. Most importantly, they are expected to increase the social and environmental performance of companies (Glasbergen 2007). Furthermore, this development is assumed to be able to overcome the inadequacies of state action (Lemos & Agrawal 2006). Many scholars see the inclusion of private parties in international governance as an important solution to a range of problems of governance beyond the nation-state which increases both the effectiveness and the legitimacy of international governance (Reinicke & Deng 2000, Wolf 2001). Multi-stakeholder governance is considered to provide forums intended to promote dialog, learning, and best practices (Bexell & Mörth 2010, p. 13). Others argue that private entrepreneurs should be engaged in critical and constructive debates on development issues (Knorringer & Helmsing 2008). On the other hand, many scholars observe this shift with much criticism and suggest that this new division of responsibilities often demonstrates fragile participatory foundations and struggles with issues of accountability (Stoker 1998, Glasbergen 2007, Vermeulen *et al.* 2008, Bäckstrand 2008). The inclusion of private actors in governance processes has been criticized because some groups have privileged access, collaborations may be focused on selective topics and discourses (Haufler 2002), asymmetries of power might result in colonization of the arrangements by market actors (Saurin 2001, Richter 2002, Newell 2005), and they might diffuse the radical potential of green critique (Falkner 2003).

A related second debate focuses on the democratic potential of private governance arrangements. One interpretation considers these arrangements to be part of the 'deliberative turn' in the governance of environmental and sustainability issues. This positive interpretation refers to the arrangements as "more or less explicit attempts to democratize politics and simultaneously foster more effective policies" (Bäckstrand *et al.* 2010, p. 4). By including a wide range of stakeholders, they are suggested to be able to address the democratic deficits of international governance institutions (Bexell & Mörth 2010, p. 13). They are considered as "viable forms of deliberative democracy suitable for the global level, which is defined by a lack of supranational authority" (Bäckstrand 2006). On the other hand, the democratic potential of private multi-stakeholder arrangements has been criticized. Private arrangements often lack the inclusion of marginalized interests and of radical discourses (Cheyns 2011) and their "constituent partners are not publicly controlled but privately owned" (Campbell 2005, p. 1). Collingwood and Logister (2007) argue that NGOs intervene in the lives of citizens who are not represented in their organizations. "Because NGOs are usually single-issue organizations – as are many multinationals – in many respects they lack the degree of impartiality ideally needed to deal with situations in which normative conflicts occur. The quality of the outcome of such conflicts is therefore dependent on the accidental presence of countervailing powers advocating on behalf of the conflicting claim" (Collingwood & Logister 2007). Moreover, if citizens are not included in their decision-making processes, their interests in, for example, a cleaner environment might not be taken into account (Börzel & Risse 2002, p. 15). Some private governance arrangements are even labeled as 'extra-democratic' and said to be a (re)invention of a colonial food order by representing a new mode of authority outside the democratic nation state in which large companies are dominant (Campbell 2005).

The third debate is more practical and focuses on private certification as an instrument to adequately address sustainability issues. Many private governance arrangements use the mechanism of certification to enforce their regulation. The standards against which they certify are "external points of reference by which a product or a service's performance, its technical and physical characteristics, and/or process and conditions under which it has been produced or delivered, can be assessed" (Nadvi and Waltring, 2004, p. 56). Bartley (2010) conceptualizes certifying arrangements as consisting of different types of regulation. Private arrangements can be characterized as market-based instruments, as regulation by information and as voluntary programs. First, certification is market-based since it derives its authority for a large part from the supply chain (Cashore 2002). Furthermore, the costs of non-compliance arise from market forces, instead of hierarchical government authority

(Bartley 2010). Second, certification as regulation by information means governing by disclosure of information. In case of Roundtables this disclosure of information pertains to the sustainability of production processes. If standards or the auditing process are not effective or credible, certification may run the risk of generating disinformation and being regarded as 'greenwashing' (Bartley 2010, p. 6). Third, certification is voluntary and therefore stakeholders must see individual benefits in order to participate. This creates a tension between the stringency of the standard and participation (Bartley 2010, p. 6). "Some believe monitoring and certification will provide consumers with a false sense that problems have been solved and will de-mobilize international labor and environmental campaigns, while others see the information generated by non-governmental regulation as key to transforming how we produce, consume and regulate global products and processes" (O'Rourke 2006, p. 899).

Otieno and Knorringa (2012) distinguish between two opposing views on the developmental relevance of standards. The first emphasizes the exclusionary effects of standards resulting from a lack of resources and capacities of actors from developing countries to comply with these new requirements. The second view focuses on the potential opportunities of standards and the competitive advantage they can bring to developing countries. However, many researchers point to the limitations and weaknesses of private certification. According to Ponte, Gibbon and Vestergaard (2011, p. 300) "it is becoming clearer that standards are unable to substantially address some of the more complex social and environmental problems". This is partly due to their voluntary nature and their limited capacity to promote systemic change. Djama, Fueilleax and Vaneron (2011, p. 205) state that "sustainability standards are dominated by a neoliberal political rationality". They argue that standards are essentially not designed to solve environmental and social problems, but are rather created for managerial reasons. Moreover, there is an increasing concern that these global standards are geared towards Northern priorities and fail to substantially include Southern perspectives (Otieno & Knorringa 2012). Another concern is that smallholder farmers are excluded because of high certification and monitoring costs (van Dijk & Trienekens 2012). Furthermore, only a limited number of business actors will have sufficient incentives to join a certification initiative, which limits the scope of these initiatives (Marx 2008, p. 268). Marx et al. (2012) conclude that although private standards are an important governance instrument, their global impact might be further limited as they are mainly active in a selected number of (developed) countries.

These three debates are all – although on different levels - related to the justification of private governance. Scholars within the first debate attempt to find an ideal division of responsibilities between public and private actors. The second debate revolves around normative democratic principles that need to underlie the arrangements. Scholars within the third debate discuss the appropriateness of the instrument private governance arrangements use to enforce their regulation. Thus, the debates sketched above represent attempts to specify what factors might serve as justifications for private actors to engage in governance activities and are therefore also debates on what constitutes legitimate private governance. To be able to contribute to these debates, this dissertation therefore analyzes issues of legitimacy related to private governance arrangements.

1.4 Private governance and democratic legitimacy

In the study of private governance arrangements, most scholars take a normative approach to studying legitimacy based on democratic theory. They conceptualize legitimacy as having an input and output dimension (Mueller *et al.* 2009, Fuchs & Kalfagianni 2010, Upham *et al.* 2011, e.g. Hahn & Weidmann 2012). These input-output approaches to legitimacy focus on what should count as justification for recognizing the authority of private arrangements (Bernstein 2011, p. 21). Moreover, they present normative criteria against which the legitimacy of governance arrangements is assessed. Input legitimacy is generally conceptualized as the participatory quality of a decision-making process and is generated when actors who are affected by a decision have an input in the decision-making process (Schäferhoff *et al.* 2007). Output legitimacy, on the other hand, is conceptualized as being concerned with the purpose and appropriateness of the governance activity of the arrangements. Therefore, the arrangements are assessed in terms of their contribution to collective problem solving; for example, their ability to contribute to environmental conservation, empowerment of marginalized groups, or protection of basic human rights. Thus, if an outcome of a policy decision serves the public good and is effective in tackling a problem, it attains output legitimacy (Scharpf 1999). Some authors add a throughput dimension to this conceptualization of legitimacy. Throughput legitimacy is generally focused on the procedural elements of a governance arrangement and is achieved when decisions are made on the basis of a fair procedure and thus regards the quality of the decision-making process itself (Risse & Kleine 2007, Mueller *et al.* 2009).

These input-output approaches to the study of legitimacy in private governance differ only slightly from each another. Mena and Palazzo (2010), for example, argue that the concepts

of input and output legitimacy, traditionally used to evaluate the legitimacy of democratic states, need to be adapted to the conditions of private governance arrangements. They use deliberative democratic theory for this purpose as they argue that the deliberative notion of democratic legitimacy seems to be the most appropriate. Based on this theoretical notion they formulate four input legitimacy criteria: inclusion, procedural fairness, consensual orientation, and transparency; and three output legitimacy criteria: coverage, efficacy, and enforcement. They believe these criteria and their impact on the legitimacy of private governance arrangements can be empirically tested and measured. At the same time, they argue that these criteria provide opportunities to enhance the overall legitimacy and effectiveness of private governance arrangements. Fuchs and Kalfagianni (2010) take a very similar approach by assessing private authority on their input and output legitimacy and by also looking at their deliberative democratic potential. Hahn and Weidtmann (2012) also base their approach on deliberative democratic theory. In addition to the input and output dimensions, they include a throughput dimension to their conceptualization of legitimacy, as do Mueller, Santos and Seuring (2009). The latter authors focus on legitimacy in supply chain governance (standards) and they operationalize the input, output and throughput dimensions into five criteria to evaluate governance arrangements: inclusivity, discourse, control, supply chain, and transparency.

Another interesting and slightly different example of this type of approach is presented by Beisheim and Dingwerth (2008) who draw on two debates in the literature on private governance: the first debate considers the prospects of success of private governance arrangements, and a second debate focuses on their normative procedural legitimacy (ibid., p. 5). In their research, they explore the hypothesis that the procedural legitimacy of private governance schemes improves their prospects for success and they try to explain how this might work (ibid., p. 5). They use the concept of *normative procedural legitimacy*, which refers to “a private scheme’s performance in terms of four values associated with democratic decision-making, namely inclusiveness, transparency, accountability and deliberativeness” (ibid., p. 6) and examine its influence on the *success* of such a scheme, which is defined as “the capacity to guide the behavior of its addressees” (ibid., p. 6). Thus, in a way, they are analyzing the causal relationship between input and output legitimacy. They identify three mechanisms that link the two variables: ownership through participation based on inclusive, fair and representative participation; social learning and persuasion based on deliberation; and social control based on transparency and accountability (ibid., p. 12-16). They suggest that while inclusiveness and deliberation are

primarily relevant for private governance arrangements to gain legitimacy, transparency and accountability are important to maintain their legitimacy (ibid., p. 25).

While not always using the input-output distinction, other studies of private governance also focus on democratic legitimacy (e.g. Palazzo & Scherer 2006, Baur & Palazzo 2011). These approaches are very similar to the input-output legitimacy approaches, as they also formulate normative criteria based on deliberative democratic theory to assess the legitimacy of private governance arrangements. Cadman (2011), for instance, evaluates the legitimacy of private standards by using two criteria based on this theoretical approach: 'meaningful participation' and 'productive deliberation'. Fuchs, Kalfagianni and Havinga (2011) use the criteria of participation, transparency and accountability to evaluate the democratic legitimacy of private food retail governance institutions. As many other authors, they argue that traditional notions of democracy are not directly applicable to the global private sphere and turn to concepts of cosmopolitan democracy and discursive democracy to define their criteria for legitimate private governance (Fuchs *et al.* 2011, p. 357). Palazzo and Scherer (2006) look at the legitimacy of Corporate Social Responsibility (CSR) and also take a normative approach based on deliberative democratic theory. Baur and Palazzo (2011) look at the moral legitimacy of NGOs as partners of corporations and build on deliberative democratic theory as well.

Although these approaches render interesting results by pointing out several weaknesses of private governance arrangements in terms of inclusion, participation, transparency, and accountability, they are rather limited in their scope for three reasons. First, these approaches are normative in the sense that they evaluate the legitimacy of private governance arrangements according to certain criteria. As a consequence, they hardly inform us about the different ways in which legitimacy might develop. Second, these approaches are rather state-oriented. As the previous sections showed, private governance arrangements differ essentially from traditional state regulation, and therefore face different challenges regarding their capacity to govern. While most authors agree that legitimacy demands are changing, and adapt their evaluation criteria accordingly, these approaches still evaluate private governance arrangements on democratic criteria that were initially developed to evaluate the performance of state actors. Third, evaluating arrangements on these rather rigid criteria presents a static approach, which does not allow for an analysis of the processes through which standards become accepted as an authoritative norm in their issue field. Since private governance arrangements emerged rather recently, these are norms in the making and therefore this dissertation distances

itself from the approaches that conceptualize legitimacy as “a scale of more or less fixed ‘legitimacy values’, to be used as an objective yardstick in the assessment of different policies or systems of governance” (Ahrnens, 2007, p. 96). An additional, interesting approach might look at how legitimacy by private governance arrangements is actively constructed, sustained and challenged, and could therefore take a more open approach towards studying legitimacy.

1.5 Research approach: studying processes of legitimization

In this dissertation legitimacy is conceptualized as a relational and relative concept, taking shape in social processes, rather than being operationalized as a fixed evaluative framework. Legitimacy is a *relational* concept in the sense that it is constituted in a relationship between a governance arrangement and its relevant audiences. It is a quality attributed to a governance arrangement by these audiences. They can grant (or withhold) authority to private governance arrangements (Cashore 2002). “Whether in reference to a corporation seeking legitimacy from consumers, competitors, and regulators, a government seeking legitimacy from its citizens, or an international organization seeking legitimacy from governments and transnational non-state actors, legitimacy entails that those communities accept the organization as appropriately engaged in the task at hand” (Bernstein 2011, p.24). Legitimacy is a *relative* concept in the sense that “there are no universally shared criteria of legitimacy” (Koppell 2008, p.192). Firstly, legitimacy demands differ per historical and societal context (Bernstein & Cashore 2007, Bernstein 2011). Second, actors within the same context can disagree on what constitutes legitimate authority. “A single construction of legitimacy may not emerge, and the process may rather be characterized by competing norms and challenges to ascendant constructions” (Connelly *et al.* 2006, p. 270). Third, more than one governance arrangement can attain legitimacy at the same time, even by the same audience.

Legitimacy in this conceptualization is not a static concept, since it can be granted and withdrawn by several distinct audiences, while at the same time legitimacy demands can change. Therefore, it should be conceived as constituted in a social process where phases of legitimization and de-legitimization can occur consecutively or in parallel. This view of the concept requires a specific definition, which acknowledges that legitimacy is embedded in a specific community of actors and that legitimacy demands differ through social and historical contexts. Therefore, this dissertation follows Suchman (1995, p. 574) who defines legitimacy as “a generalized perception or assumption that the actions of an entity are

desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions”. However, from this definition the process dimension of the concept does not become explicit. Therefore, this dissertation rather refers to the concepts of legitimization and de-legitimization, which refer to processes of becoming (de)legitimized.

1.5.1 Research questions

Considering the above conceptualization of processes of legitimization, this dissertation aims to address the following main research question:

How can processes of legitimization in private governance arrangements be analyzed and explained?

Within the context of this rather open question, the dissertation picks up on four central themes regarding processes of legitimization in and of private governance arrangements, more specifically in and of Roundtables. These themes are addressed in the form of four empirical chapters (Chapter 2-5), which each address a specific sub-theme and center on the following sub-questions:

i. What factors can explain the specific development of processes of (de)legitimization in Roundtables?

By using an inductive and explorative research approach, Chapter 2 analyzes the practices through which legitimacy is created in two Roundtables. Legitimacy is conceived here as being rooted in a process of interaction among diverse actors, connected to a specific issue area, and in a specific contextual environment. This serves to explain the specific development of processes of (de)legitimization of Roundtables. The first level of explanation is actor-based, while the second level refers to institutional factors that provide opportunities and constraints for legitimate interactions to develop.

ii. How is legitimacy created through legitimization processes in global private governance arrangements?

To answer this question, Chapter 3 takes a more deductive approach and looks at three different perspectives found in the academic literature: the legal approach, which focuses on legality; the political philosophical approach, which concentrates on moral justifications; and the sociological approach, which addresses the process of creating acceptance of a rule-system. This leads to a multi-dimensional conceptualization of legitimacy in which each of these perspectives highlights a

specific aspect of the process of legitimization: legalizing an arrangement, morally justifying it, and organizing external consent. The empirical analysis reveals these characteristics of a legitimization process of a Roundtable, thereby showing the value of a multi-dimensional approach for analyzing the creation of legitimacy.

iii. What is the democratic potential of private governance arrangements like Roundtables?

Chapter 4 also takes a deductive research approach and uses deliberative capacity as a central concept. As shown above, the literature often links legitimacy directly to democratic ideals. The democratic quality of private multi-stakeholder governance in itself is also an important subject of academic and political debate. To inform this debate, the chapter approaches the democratic potential of Roundtables by assessing their deliberative capacity. Deliberative capacity is analyzed by scrutinizing to what extent the communicative processes in Roundtables are inclusive, consequential and authentic. The chapter thus does not directly look at the concept of legitimization, but aims to shed light on a related debate on democratization.

iv. What are the consequences of the interactions between public and private regulatory strategies on processes of legitimization of private governance arrangements?

Chapter 5 analyzes the interactions of Roundtables with public regulatory strategies also by taking a more deductive approach. Roundtables do not operate in isolation of other governance arrangements and their legitimization processes are influenced by these interactions. A dominant view in the literature is that public regulation may strengthen private governance arrangements as well as their legitimization processes. The chapter looks at processes of internal and external legitimization to analyze if this view holds in the issue field of biofuels. This chapter finds that the interaction between these two modes of governance – public and private – triggers a competition between divergent processes of legitimization and in doing so, seems to decrease the overall governance capacity in this issue field.

These four empirical chapters present an intertwined mosaic of approaches to analyzing and explaining processes of legitimization. A brief positioning section preceding each of the empirical chapters will further articulate the connections between the chapters.

1.5.2 Empirical focus: Roundtables

The empirical focus of this dissertation lies on a specific type of private governance arrangement: the so-called Roundtable. These initiatives developed in the aftermath of other certifying private governance arrangements such as fair-trade, organic agriculture, the Forest Stewardship Council (FSC), and the Marine Stewardship Council (MSC). Two trends in the development of private certifying arrangements can be distinguished. First, standards are becoming more and more a multi-stakeholder effort, instead of a single-actor or small group affair. Second, early private certifying arrangements were concerned with establishing niche markets, while later arrangements have a much more 'mainstream' approach. Roundtables are illustrative of these trends. They are multi-stakeholder in a broad sense and have the specific aim to change an entire sector, instead of aiming for a niche market.

Two key interrelated processes can be distinguished to characterize Roundtables. The first is the multi-stakeholder process by which these arrangements develop a standard. Roundtables typically include a wide range of actors in developing their standards and accompanying certification schemes. Members involved in this process include commodity chain actors (from North to South and from the local to the global level) and several types of NGOs (development or environment oriented, also from the local to the global). These arrangements are based on decision-making by consensus, and develop voluntary regulation for the production of agricultural commodities. Governmental agencies as well as scientists can only step in as observing members or advisors, or take on informal roles. Consumer groups are generally not included, which makes them essentially business-to-business-to-NGO arrangements. The second process concerns the implementation of the standard. This is typically organized through the use of audits from third party organizations. These certification bodies need to be accredited by accreditation organizations. Certification bodies are expected to be independent arbitrators of production processes (Hatanaka & Busch 2008). The ideal of this construction is to achieve an objective measurement of sustainability and verification. However, Roundtables are not neutral technical tools to govern an issues area, but are characterized by politicized processes in which opposite interests are represented, and therefore need to be conceptualized as political arenas of contestation and interaction.

Roundtables can be regarded as new political arenas that aim to regulate so-called 'wicked problems' regarding these agricultural commodities. For these problems no ultimate problem definition and definite solution exist, and stakeholders have fundamentally different frames of reference regarding them (Peterson 2009). One of the main rationales

underlying the establishment of Roundtables is to decrease the negative sustainability impacts related to the expansion of agricultural production. Globally, there is an increasing demand for agricultural products. This demand is driven by a growing world population combined with a rapid increase in welfare for parts of this population. This increased demand leads to a boom in certain agricultural sectors and to an expansion of the land that is cultivated, mainly in developing countries. In case agricultural expansion leads to the conversion of land previously not used for agricultural purposes, three effects are particularly pertinent from the perspective of sustainable development. From an economic point of view, agricultural expansion offers the prospect of economic growth, which affects the millions of people in developing countries who depend directly on agriculture for their livelihoods and nutrition. From a social perspective, agricultural expansion oftentimes results in conflicts about the ownership and usage of land. Finally, from an environmental angle, agricultural expansion frequently occurs through deforestation and habitat conversion, which leads to a change in the function of land and can result in the loss of biodiversity.

1.5.3 Case studies

To answer the central research question this dissertation takes a qualitative research approach in the form of in-depth case study research. The focus lies on two case studies in order to be able to follow the arrangements over time. Each of the empirical chapters of this dissertation contains an extensive description and analysis of one or both of these arrangements, and therefore this section only provides a short introduction to both arrangements.

For this dissertation two front-running and mature Roundtables were selected: the Roundtable on Sustainable Palm Oil (RSPO) and the Roundtable on Responsible Soy (RTRS). The RSPO, initiated in 2002, is generally regarded as the first of the Roundtables and is also the most mature. The RTRS, initiated in 2004, was based on the RSPO-model, and therefore has a very similar architecture. Both Roundtables have made important steps in their development, and have managed to secure a steady supply of certified products, which means that all aspects of their development can be analyzed. The similarities in governance architecture of these two arrangements allow for a comparative case study approach if necessary (e.g. Chapter 2 and 4).

Palm oil and soy are both produced in huge quantities and are of major importance in global agricultural markets since they are consumed globally. Both products are used as food, animal feed and biofuel, and face severe sustainability challenges. The main

production areas of oil palm are in Malaysia and Indonesia, where the expansion of production forms a threat to biodiversity hotspots, social rights of local people, and smallholder integration (van Dijk 2012). The expansion of soy production contributes to very similar problems in Latin America and Asia. These challenges not only highlight the need for more sustainable production, they also underline that an in-depth analysis of the governance solutions currently proposed is both timely and highly relevant.

1.5.4 Data collection

All data for this dissertation was collected in the 2008-2013 period. The data collection methods include literature reviews, desk research, analysis of secondary literature (reports, minutes, presentations, etc.), observational analyses at Roundtable meetings, semi-structured (phone) interviews, and informal conversations. Data collection methods are detailed in each of the empirical chapters.

1.6 Outline

This dissertation is based on a collection of empirical analyses which view and analyze the processes of legitimization in Roundtables through different lenses. Different theoretical perspectives, concepts and methods are applied throughout this dissertation to generate detailed insights into these processes. Chapter 2 has an exploratory character and takes an inductive approach to the study of processes of legitimization, identifying several agency-based and structure-based factors that influence these processes. Chapter 3 pursues a multi-dimensional approach towards processes of legitimization and uses a legal, political philosophical and sociological dimension to study the development of legitimacy in Roundtables. Chapter 4 analyzes the deliberative capacity of these Roundtables. Chapter 5 looks at the interaction of Roundtables with other institutions and the consequences thereof for processes of legitimization in and of Roundtables. The concluding chapter reflects on how processes of legitimization can be analyzed and explained. Furthermore, it sketches the contributions of this research to specific debates in the literature. The dissertation concludes with an outlook on the future of Roundtables and sketches three possible scenarios on how the division between public and private responsibilities for sustainable agriculture might play out.

Positioning Chapter 2

‘Private multi-stakeholder governance in the agricultural market place: An analysis of legitimization processes of the Roundtables on sustainable palm oil and responsible soy’

Chapter 2 aims to answer the following research question:

What factors can explain the specific development of processes of (de)legitimization in Roundtables?

Chapter 2 of this dissertation serves to get a first grip on the overall research topic. It commences the analysis of processes of legitimization in Roundtables by inductively exploring these processes in an in-depth manner. The legitimization processes of two Roundtables are analyzed: the Roundtable on Sustainable Palm Oil and the Roundtable on Responsible Soy. From this comparative analysis explanations for the specific development of such a process are derived. The first level of explanation is actor-based and addresses the factors of trust and collaborative advantage. The second level refers to institutional factors that provide opportunities and constraints for legitimate interactions to develop, such as the structure of the commodity chain, the type of lead firms in it, and the role of governmental policies. The analysis reveals several characteristics of possible legitimization problems and their implications for the application of this governance model.

This chapter was written in collaboration with Pieter Glasbergen, and has been published in the *International Food and Agribusiness Management Review*. The full reference is:

Schouten, G., & Glasbergen, P. (2012). Private multi-stakeholder governance in the agricultural market place: An analysis of legitimization processes of the roundtables on sustainable palm oil and responsible soy. *International Food and Agribusiness Management Review*, 15 (Special Issue B), 63-88.

2 Private multi-stakeholder governance in the agricultural market place: an analysis of legitimization processes of the Roundtables on sustainable palm oil and responsible soy

2.1 The rise of partnerships in global agri-food chains

Over the last decennia we have seen the initiation of a new model for governing agricultural commodity chains in response to severe sustainability challenges. These so-called wicked problems are “dynamically complex, ill-structured, public problems” (Batie 2008, p. 1176) for which no ultimate problem definition and definite solution exists and for which stakeholders have fundamentally different frames of reference (Peterson 2009). These new models of governance have become a crucial component of the strategy of many large multi-national companies in the food industry (Dentoni & Peterson 2011). In a new form of partnership, businesses and NGOs took the initiative to define more sustainable production standards and related certification schemes to address these problems. These arrangements often focus on a specific product(-type) and aim to make a whole agricultural sector more sustainable. These collaborative, multi-stakeholder arrangements have been defined as non-hierarchical, self-organizing alliances to promote more sustainable production and consumption practices, while using the market as a coordinating mechanism to realize this objective (Glasbergen 2007). Not only are these partnerships non-hierarchical, they can also be categorized as post-territorial, because their spatial boundaries are not demarcated by fixed, jurisdictional borders.

Outstanding examples of these arrangements take the form of a Roundtable. The two front running Roundtables are the Roundtable on Sustainable Palm Oil (RSPO) and the Roundtable on Responsible Soy (RTRS). These multi-actor arrangements show overlap in driving actors, face similar sustainability problems, and have similar organizational structures:

- The founding actors of the RSPO, the World Wide Fund for Nature (WWF) and Unilever, were also involved in setting up the RTRS and several businesses and NGOs actively participate in both roundtables.

- Both palm oil and soy are used on a global scale for food, feed and fuel. Both crops are largely planted as export driven, large-scale monocultures and belong to the fastest expanding crops in the tropics. Sustainability problems in both sectors relate to deforestation, loss of biodiversity and labor and land rights issues.
- Their governance structure and decision-making processes are such that commodity chain actors, as well as environmental and developmental NGOs are represented in the Executive Board and General Assembly of the roundtables. The General Assembly is in both cases the highest decision-making body.

The RSPO started a process to address sustainability concerns in palm oil production by engaging actors from all levels of the commodity chain in 2002. The RSPO currently counts over 1000 members and represents approximately 40% of global palm oil production and the majority of upstream food manufacturers in the supply chain. Members are divided into several membership categories: Oil Palm Growers; Palm Oil Processors and/or Traders; Consumer Goods Manufacturers; Retailers; Banks and Investors; Environmental/Nature Conservation NGOs; Social/Developmental NGOs; and Affiliate members. This last category of affiliate members does not have decision-making power or voting rights within the RSPO. Through a series of multi-stakeholder working groups, members of the RSPO spent several years designing Principles and Criteria (P&C) for sustainable palm oil production, a verification and certification process, and mechanisms for supply chain traceability and tradable credits. The General Assembly is the highest decision-making body of the RSPO, where all members have one vote and decision-making occurs by majority voting. The first shipment of certified palm oil entered the market in November 2008.

The first RTRS meeting was held in London (2004), when WWF invited 25 potential stakeholders to discuss the idea of addressing sustainability issues in mainstream soy production through a multi-stakeholder process (RTRS 2010a). Currently, the RTRS has approximately 150 members and represents a smaller portion of the market than the RSPO. Members are divided into 4 categories: Producers; Industry, Trade and Finance; Civil Society; and Observers. Observing members have no decision-making power or voting rights in the RTRS. The General Assembly also is the highest decision-making body. To prevent domination of one stakeholder group, voting in the General Assembly takes place per constituency group, instead of the one-member, one-vote principle in case of the RSPO. The RTRS approved the P&C for responsible soy production and an accompanying

verification system in June 2010. The first shipment of certified soy from South America came to Europe in June 2011.

Both RSPO and RTRS can be seen as representatives of the development of a new global domain that is not only filled with (inter)governmental organizations but also with private arrangements that aim to fulfill a public function (Ruggie 2004, Abbott & Snidal 2009). One of the central debates related to this development regards the legitimacy of what Bernstein addressed as 'non-state governance in the market place' (Bernstein 2011). This debate is mainly based on a specific interpretation of the role of states in liberal democracies. According to this interpretation, states are the ultimate and exclusive authoritative agents in public affairs. The state needs to set the rules of the game and private actors need to pursue their activities within these rules (Glasbergen 2011). From this interpretation, legitimization of private governance may be problematic, for example, because private actors taking over political functions may erode public power; because these arrangements cannot be held accountable like governments to those who are affected; or because of doubts about the effectiveness of voluntary private standards given the lack of sanctioning power (i.e. Bäckstrand *et al.* 2010, Bexell & Mörth 2010, Steets 2010).

However, these studies tell us little about the practices of creating legitimacy in terms of the ability of the arrangements to develop a more sustainable alternative to current practices that becomes accepted as an authoritative norm in their issue field. They also inform us less about problems associated with legitimacy that can occur within these multi-stakeholder settings and what this implies for these types of arrangements. Therefore this chapter analyzes the practices through which legitimacy is created by looking at the interactions between the actors in Roundtables and the institutional context in which these interactions take place. The next section presents an operationalization of the question of legitimacy. Subsequently the methodology is presented, followed by an empirical analysis of the two Roundtables. From this analysis two levels of explanations for the specific development of these legitimization processes are derived. The first level refers to actor-related factors, while the second level refers to institutional factors that provide opportunities and constraints for legitimate interactions to develop. In the concluding section several problems regarding the creation of legitimacy are identified as well as possible strategies to overcome these.

2.2 Operationalization of the question of legitimacy

The concept of legitimacy refers to the acceptance and justifications of authority. According to Suchman, it is “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed systems of norms, values, beliefs and definitions” (Suchman 1995, p. 574). Biermann and Gupta’s approach of legitimacy refers to this classical interpretation and define legitimacy as “being in accord with established norms and requirements, or recognized principles or accepted rules and standards of behavior” (Biermann & Gupta 2011, p. 1858). Most studies on legitimacy take a state of affairs as a starting point and assume that this state can be evaluated on its *degree* of legitimacy. Their starting point is normative, in the sense that evaluations are based on what is assumed to be required to make governance arrangements legitimate. They either evaluate the procedures or the substantial content of private arrangements (i.e. Bexell & Mörth 2010, Bäckstrand *et al.* 2010).

The procedural or input legitimacy approach evaluates the process through which decision-making takes place. It is assumed that non-state governance may become as legitimate as intergovernmental policies if they conform to equivalent democratic prerequisites, such as transparency, accountability, inclusiveness, etc. (Dingwerth 2007, Keohane 2011). The substantive or output legitimacy approach is concerned with the purpose and appropriateness of the governance activity of the arrangements. Here the arrangements are assessed in terms of their contribution to collective problem solving, for example, their ability to contribute to the protection of basic human rights, environmental protection, or empowerment of less privileged groups. If an outcome of a policy decision serves the public good and is effective in tackling a problem, it attains output legitimacy (Scharpf 1999). Both approaches focus on what *should* count as justification for recognizing the authority of private arrangements (Bernstein 2011, p. 21). However, they inform us less about the process through which their standards become *accepted* as an authoritative norm in their issue field. According to our view, an (additional) approach that aims to better understand the process of creating legitimacy would look at the practices through which legitimacy is realized. This approach studies the often cumbersome process of bringing diverse actors together to develop a common acceptable new management standard and the factors that influence this process.

This approach assumes that the legitimacy of private governance arrangements is rooted in a process of interaction among diverse actors, connected to a specific issue area, and in a specific contextual environment (Bernstein 2011, Schouten & Glasbergen 2011). For

analytical reasons we divide this process into several ideal-typical phases. These phases are informed by theories regarding the policy cycle frequently used in the field of policy analysis (see for example Crabbé & Leroy 2008, p. 3) and are adapted to the multi-stakeholder governance model of Roundtables based on earlier studies (Schouten & Glasbergen 2011, Schouten *et al.* 2012). These phases include: engaging stakeholders in the multi-stakeholder process; defining the problem area and coming to an agreement on how to tackle the issues; implementing the agreed solutions and assuring compliance; assuring acceptance of external audiences. These phases should not be interpreted as taking place in a strict chronological order. A Roundtable process is an iterative process and phases can overlap as actors as well as issues can be in a different phases of the process at the same time. This chapter takes the interactions between the partners in the arrangement as the key unit of analysis. Related to these phases in the development of a Roundtable four factors are important to the process of creating legitimacy:

1. The inclusion of relevant stakeholders in the multi-stakeholder process.
2. The opportunities for stakeholders to come to an agreement on how to govern the sector.
3. The degree of compliance of involved stakeholders with the agreements.
4. The degree of acceptance of third party audiences of the outcomes of the process.

From this analysis this chapter derives explanations for the specific development of these legitimization processes. The first level of explanations is actor-based and regards the factors trust and collaborative advantage. The second level refers to the, on the short-term inalterable, societal context in which the interactions develop. Here our focus shifts to institutional factors that provide opportunities and constraints for legitimate interactions to develop, such as the structure of the commodity chain, the type of lead firms in it and the role of governmental policies. Subsequently, it is important to understand how these two levels are interacting.

2.3 Methodology

This chapter takes a case study approach similar to the one described by Eisenhardt (1989) and uses in-depth data to understand the complex dynamics going on in multi-stakeholder settings. Previous research endeavors on legitimacy did not reveal much about the

processes through which multi-stakeholder arrangements become legitimized. In order to provide empirical substantiation to this field of research, this chapter studies the practices through which legitimacy comes about. Several data collection methods are combined, including desk research, interviews and observations. Our comparative case study analysis is based on official documents produced by the RSPO and RTRS, minutes of Executive Board meetings, minutes of General Assemblies, and minutes of Working Group meetings. These documents are supplemented by documents on both Roundtables published by individual stakeholders of the Roundtable, and news articles. The desk research is further complemented by over 30 semi-structured in-depth interviews with individual members of both Roundtables (representatives of NGOs and value chain actors) and members of both Executive Boards about the development processes of the arrangements. Furthermore, several employees of NGOs that did not apply for membership of a Roundtable, but are working on palm oil and/or soy issues related to sustainability, were interviewed (a list of interviewees is available in the appendix). Additionally, observations were made during Executive Board meetings of the RTRS, the fourth Roundtable Conference on Responsible Soy and the third General Assembly of the RTRS, all in May 2009 in Campinas, Brazil. Furthermore, observation methods were used during the ninth Roundtable Conference on Sustainable Palm Oil and the eighth General Assembly of the RSPO in November 2011 in Kota Kinabalu, Malaysia.

The two cases were selected on the basis of their organizational similarities, as the RTRS is a copyist initiative of the RSPO. This unique situation allows us to conduct an in-depth comparative case study analysis in which we try to bring the factors that cause differences in their legitimization processes to the surface. This chapter uses the in-depth data in an inductive manner to generate new insights on factors that might hinder or enhance legitimization processes of Roundtables. Our qualitative data are very useful for understanding the dynamics underlying relationships and the reasons behind what we see happening in the cases (Eisenhardt 1989).

2.4 Inclusion of stakeholders in the process

Both roundtables have the aim to get all stakeholders in the commodity chain plus environmental and developmental NGOs involved (RSPO 2012a, RTRS 2012a). Despite this intention, they both face problems including smallholders, local communities and consumers (Cheyns 2011, RTRS 2011a). These stakeholder groups are mostly made up out

of individual actors instead of organized interest groups. To actively involve these large numbers of individual stakeholders is extremely challenging for Roundtables.

Nonetheless, the RSPO was relatively successful in involving relevant stakeholders. They managed to attract large producing companies from the two most important producing countries, Indonesia and Malaysia (Unilever 2012). Furthermore, they have managed to get an important part of retailers in Europe and the United States involved, as well as a large amount of NGOs from many parts of the world (RSPO 2012a). On the other hand, they have hardly been able to engage stakeholders from importing countries of palm oil outside the Western world, such as China. Several programs were set up to get Chinese stakeholders involved, but so far the RSPO has only managed to get three Chinese companies on board (Cheng Hai 2011). Private market initiatives, like the RSPO, miss an institutional fit with the socialist market economy as it exists in China. The RSPO is aware of this problem and recognizes that the role of the Chinese government is critical to provide the enabling environment for collaboration to take place. However, it is still unclear how this process should exactly be managed.

The RTRS was less successful in including stakeholders into their multi-stakeholder process. First of all, they faced difficulties including global development and social NGOs in the standard setting process. Most Latin American NGOs did not become part of the process so that they are able to oppose the outcomes if they do not agree with them (interview #8). Fetraf-Sul, the only organization representing small farmers stepped out of the RTRS early on in the process (2005) because it didn't feel it could influence the agenda enough. The development NGO Cordaid showed solidarity and left as well (A Seed Europe 2005). Secondly, not all main producing countries are well represented in the RTRS. While the United States are the biggest producers of soy (38 % of global production in 2003) only few RTRS members come from there (4,7 %) (RTRS 2012a). In general, soy producers from this part of the world do not see the need to address sustainability issues in their domestic industry. Third, the RTRS faces the same problem as the RSPO in terms of involving stakeholders from some important consumer countries. China's soy imports account for over 50 % of the world total. Despite this major role in the global soy market their membership count in the RTRS is very low (2 % of total membership), whereas Europe, importing only 17 % of global soybean, has a share of 44 % of the members (USDA 2010).

A fair distribution of costs and benefits is essential to keep stakeholders involved in a partnering process. Both Roundtables were not able to manage this issue properly and had prominent members leaving the process. Future expansion of palm oil is most likely to

occur in Indonesia and so standards aimed at reducing deforestation and requiring environmental assessments and social audits on new developments will mostly affect plantations there (interview #10). This makes Indonesian producers feel they bare most of the costs of certification, while benefits of the collaboration did not yet materialize. The Indonesian Palm Oil Association, GAPKI, resigned their RSPO membership in the second half of 2011 (RSPO 2012b). They felt the organizational structure of the RSPO was not balanced enough at the expense of the producers and want to focus on their own Indonesian certification system (ISPO) (interview #34) (RSPO 2010, TROPIS 2011). The RTRS faced similar problems. During the creation of the P&C an important participant, APROSOJA (Mato Grosso's State Association of Soybean Producers), left the organization because of forest conservation criteria introduced in the P&C. APROSOJA argued strenuously for the RTRS to approve a compensation program for any avoided deforestation. Without seeing any prospect for financial gain from the process, they were not willing to accept the P&C and terminated their membership of the Executive Board and the RTRS at the General Assembly in 2009¹. Roundtables focus on certification standards at production level, which means that producers bare most of the costs. Some of these stakeholders therefore tend to feel that the process is unfair and unbalanced. In both cases we see that in reaction local certification systems emerge: i.e. Brazil (Soya Plus), Malaysia (MSPO) and Indonesia (ISPO).

2.5 Coming to an agreement

Consensus-based decision-making is institutionalized in the practices of both Roundtables and forms the backbone of the standard setting process. In order to reach consensus, issues need to be framed in a way that corresponds with the views of all stakeholders involved. To realize this cohesion, contentious issues are sometimes left out of the debate and so are advocates of radical viewpoints. However, in exceptional cases, when the ultimate reliability of the arrangement is at stake, the principle is abandoned, even at the cost of stakeholders leaving the process.

In the first years of the RSPO a conflict arose about the specific contribution of palm oil to sustainability problems. Whereas Malaysian producers focused mainly on poverty reduction due to palm oil development, NGOs stressed issues of deforestation caused by this development (RSPO 2003a). Producers implicitly acknowledged the need to codify best practices, but were reluctant to say that sustainability was a problem in the palm oil

¹ Observations during EB meetings in 2009, Campinas, Brazil and the GA in Campinas Brazil

industry. This conflict, which posed a risk to the development of the RSPO, was solved pragmatically. Instead of carrying on the debate on the exact contribution of palm oil to environmental degradation, it was decided to focus on a concrete standard for sustainable palm oil. At the first Roundtable conference, the natural-resource consultancy ProForest presented technical studies that would serve as a basis for the development of a standard (RSPO 2004a). This document was acceptable to all partners, because contentious issues were avoided. The P&C were further developed by a working group that was put together by the Executive Board. The facilitator of this working group indicated that none of the members tried to slow down or frustrate the process (interview #12).

An issue of contention in the P&C development group was the use of agrochemicals, in particular the use of paraquat. While prohibited in the European Union, paraquat is one of the world's most widely used herbicides. Producers insisted it was essential for their business to use agrochemicals, while NGOs insisted that the risks associated with the use of some of these chemicals to human health and safety were unacceptable. The resulting compromise on which consensus could be reached was quite disordered (interview #12). The P&C, while requiring producers to actively look for alternatives to dangerous chemicals, ultimately do not ban their use (Carrere 2006). A note was added to the P&C saying that the RSPO will urgently identify safe and cost effective alternatives to replace chemicals like paraquat, which is still included in the latest version of the P&C (RSPO 2007a). Agreement on the remaining criteria was reached relatively quickly; producers knew that there was no chance of removing or weakening criteria and still reach consensus (interview #12). Nevertheless, at the third Roundtable conference (2005), producers reported that the speed of the process gave them the impression that standards were being foisted onto them (RSPO 2005a). Despite difficult moments in the RSPO standard setting process, none of our interviewees identified any specific item that was left out of the standard completely. However, still some disagreement remains about the necessary strength and clarity of specific criteria. Standard setting in the RSPO is an ongoing process and in 2011 a P&C review process started. This review process is considered an opportunity to substantially change and improve the standard, but only if consensus on changes is possible (Yaacob, 2011).

The RTRS needed more time than the RSPO to come to a standard. Unlike the RSPO, the first RTRS conference did not have input studies on which to base their work. As a consequence the discussions were very unstructured and general and provided little direction for the future (interview #14). According to one of the participants, "what was

intended to clarify important issues became a messy, politicized event” (interview #30). In response, the RTRS organized a technical workshop to discuss the problems of soy production in a smaller setting. This workshop produced a list of key environmental and social impacts. The RTRS standard was further drafted by the Development Group, which included representatives from all member constituencies (RTRS 2012b). After every meeting, drafts were made available for public consultation during which all stakeholders were invited to provide input.

The RTRS also faced some critical issues in the standard setting process. First, for the sake of consensus the issue of genetically modified (GM) soy was excluded from the debate early on in the process. The first Roundtable conference had shown that the RTRS could either allow GM soy and lose many of the NGOs in the process, or exclude it and lose numerous producers (interview #15). They decided to be ‘technology-neutral’ regarding production techniques thereby excluding the topic from the Roundtable process (RTRS 2006), a decision that caused much opposition against the RTRS. A second controversy is related to the issue of deforestation (interview #4). This issue was so controversial that the development group delivered a proposed set of P&C to the Executive Board wherein the issue of deforestation was not addressed. Producers from Mato Grosso, Brazil resisted agreeing to any criteria on this without implementing a compensation method for the opportunity costs of forest preservation (interview #19). Earlier in the process these producers already argued that if farms were going to be certified, it was necessary and fair to also certify other operations in the value chain, such as greenhouse gas emissions of food manufacturers (interview #4 and #19). Several Executive Board members felt very strong about including criteria on deforestation, because they thought the credibility of the RTRS was at stake. After long and difficult discussions it was decided to add a criterion on deforestation to the proposed P&C. They needed to let go of the principle of consensus and made this decision by majority voting instead. Two members voted against adding this criterion, while the rest was in favor. This decision by the Executive Board caused a great deal of dissension at the General Assembly of 2009. Without seeing any prospect for financial gain from the process, APROSOJA was not willing to accept the P&C and therefore left the meeting and withdrew their membership. Subsequently, the P&C, including the criterion on deforestation, were ratified by the General Assembly.

2.6 Compliance with the rule system

For a governance arrangement to be credible it is necessary that stakeholders involved comply with the rules they have agreed upon. This is not a self-evident process as both Roundtables have difficulties in achieving this.

The RSPO encountered several critical issues in the process of getting members to comply with the developed rule-system. First, when in 2005 a large palm oil producing member was accused of illegally dismissing over 700 employees, evicting their families from estate housing, and expelling their children from estate schools, it was unclear what was expected of the Executive Board (RSPO 2005a). Therefore, a Code of Conduct was adopted, which lists the requirements of RSPO membership. It states that every member “supports, promotes and works towards the production, procurement and use of Sustainable Palm Oil”. Without this Code, the Executive Board had no means to assess whether or not a situation like this required their attention. The second critical issue was to get members to comply with the Code. A resolution was passed at the General Assembly in 2008, which called for all members of the RSPO to submit public plans of their time-bound sourcing targets and certification plan. Several producers identified this new change to the Code of Conduct as potentially very significant for predicting how the market for certified palm oil will behave (interviews with several Executive Board members). In practice, however, very few companies submit annual reports, making it difficult for producers to know how seriously end-users take their commitment to using sustainable palm oil. Technically, failing to provide these reports could be grounds for expulsion from the RSPO, but this did not happen so far.

A third critical issue appeared in the provisions of the RSPO Certification Systems document, that states that organizations can only certify individual plantations if they meet certain minimum criteria in their other holdings. These minimum criteria demand that there are no significant land conflicts, no replacement of primary forest or any area containing High Conservation Values, no labor disputes that are not being resolved through an agreed process and no evidence of non-compliance with law in any of the noncertified holdings². Certificates for all of the company’s holdings shall be suspended if there is non-compliance with any of these requirements. These clauses became an important tool for ‘watchdog’ organizations to attack companies that did not comply with these minimum criteria. The first plantation company to certify its operations was United

² RSPO certifications systems 13

Plantations (in Malaysia). After United Plantations completed this first certification, Greenpeace investigated its non-certified plantations in Central Kalimantan, Indonesia, and alleged that these United Plantations holdings did not meet the minimum criteria. They accused the RSPO of ‘greenwashing’ and allowing companies to “have their RSPO certification of Malaysian plantations but continue with business as usual in their Indonesian concessions” (Greenpeace 2008a). To not jeopardize the Roundtable process, conflicts of this sort were in several cases resolved outside of the RSPO. For example, Unilever in 2009 announced it was suspending future purchases from palm oil supplier PT SMART (Unilever 2009). This act followed the publication of two reports by Greenpeace, making allegations that the Indonesian company's plantations were responsible for destruction of high conservation value areas. Unilever took action outside of the RSPO framework and PT SMART remained an active member of the RSPO participating in several working groups.

A fourth critical issue regards the market uptake of certified sustainable palm oil, which has been very disappointing to producers. In 2008, the uptake of certified palm oil was only 2,7 %. While the uptake increased, in 2011 it was still just over half of the certified supply that was sold as such (52 %) (RSPO 2011a). WWF decided to take action to address this problem. In 2009, it announced the introduction of a ‘Palm Oil Buyer’s Scorecard,’ through which “companies will be scored on a variety of criteria relating to their commitments to, and actions on, sustainable palm oil” (WWF 2009). By publishing the performance of RSPO members outside of the Roundtable reporting mechanisms, WWF hopes to expose members to criticism for not supporting the process by actually buying the certified product. Because the uptake of certified palm oil is still lagging behind supply, WWF presented a new scorecard at the Roundtable conference in 2011, where the uptake of palm oil was an important topic of discussion. Despite the potential challenges caused by low demand, the certification of plantations has continued and so far 29 companies have had 135 palm oil mills certified (RSPO 2011a).

The RTRS faces implementation issues very similar to those of the RSPO. RTRS members also subscribe to a Code of Conduct, which outlines different responsibilities of RTRS members. The basic agreement members make is to “support and work towards the financing, production, implementation of P&C, procurement and use of Responsible Soy”. Similar to the RSPO, this Code requires members to “report annually on their efforts to support the RTRS and promote responsible soy”. The percentage of members actually submitting annual reports is very low (interview #36). If members are found to have acted

in breach of the Code, they risk disciplinary measures including termination of their membership (RTRS 2012c). As yet, there has never been a member expelled from the RTRS on these grounds. Like the RSPO, the RTRS faces problems with the uptake of certified produce. There is no trade in physical certified soy, but only in virtual credits. This system overcomes the logistical complexities of creating a segregated supply chain. Producers can register their certified soy in a credit trade platform, which soy buyers can purchase in the form of credits. Of the 400,000 tons of certified soy produced in 2011, half is covered by credits that are sold through the trading platform (interview #36). Although the credits remain valid for two years, it seems that in the RTRS the supply of certified produce also exceeds demand.

2.7 The acceptance of the Roundtables by third parties

Multi-stakeholder arrangements, such as Roundtables, have the intention to influence external stakeholders' attitudes towards the industry (Dentoni & Peterson 2011). A good gauge for acceptance of the arrangements by third parties is the character, degree, and content of opposition to a Roundtable. Both roundtables had to face much opposition of third parties, but the character, degree and content of these protests differ.

The RSPO has been subject to numerous criticisms from NGOs that have not joined the initiative. Greenpeace and Friends of the Earth are chief amongst these groups. In 2007, Greenpeace published a report in which the RSPO was described in a very negative way and the leading role of Unilever and its suppliers (Cargill, ADM-Kuok-Wilmar, Golden Hope, Sinar Mas) was critically assessed (Greenpeace 2007). In 2008, Greenpeace targeted an anti-palm oil campaign against Unilever, using their brand 'Dove' as a symbol for rapid rainforest destruction. Subsequent talks between Greenpeace and Unilever have resulted in a willingness on the part of Unilever to join the call for a moratorium on deforestation in Indonesia (Greenpeace 2009). Also in 2008, Greenpeace attempted to prevent the loading of the first RSPO certified palm oil on a Rotterdam-bound tanker in Indonesia (Greenpeace 2008b). There are many more examples of NGOs that publicly display their disapproval of the RSPO process. One of them is the German NGO 'Rettet den Regenwald'. In 2008 they published the 'International Declaration Against the 'Greenwashing' of Palm Oil by the Roundtable on Sustainable Palm Oil', which was signed by over 250 organizations worldwide (Rettet den Regenwald 2008). While campaigning NGOs are able to drive the process of developing increasingly positive and sustainable criteria forwards, their tactics have had some negative consequences as well. Producers have seen the front-

running companies being specifically targeted for anti-palm oil ads. Early campaigns may have encouraged producers to be a part of the RSPO, but they also see the companies that do certify, such as United Plantations, being singled out as a result of their efforts (interview #7). During the course of the partnering process the opposition against the RSPO decreased. Part of the reason is that campaigns as the ones described above have influenced the process. While Greenpeace and Friends of the Earth are still not members of the RSPO, they do visit RSPO conferences and are sometimes involved in the process on an ad hoc basis.

The RTRS is relatively less accepted as an authoritative agent. This can be seen in the large-scale organized opposition to the organization, which is present on several levels. First, there is opposition to the RTRS as a whole. There are two primary reasons for the relatively low support of NGOs for the process. One is the inclusion of GM-soy as potentially 'responsible.' The critics of the process include many large organizations, such as Friends of the Earth, as well as a large number of single-issue organizations, such as 'Toxic Soy' and ASEED Europe. The other source of opposition to the RTRS is based on the large-scale, mechanized production model that dominates in North and South America. The RTRS is seen by many NGOs as a symbol of big agro-industrial companies, which are viewed very negatively, because of the rapid agricultural expansions in an industry that was formerly dominated by smallholders, which has led to large social problems in Latin America (interview #24). Second, individual members of the RTRS are attacked for being part of the organization. NGOs such as WWF and Solidaridad have been attacked because of their membership of the RTRS and are accused of legitimizing a standard that does not guarantee sustainable production at all (Gifsoja 2009). Companies are also heavily criticized for being involved in the Roundtable process. An example includes campaigns against a large Dutch supermarket, because of their support to the RTRS (Gifsoja 2011).

The difference between degrees of acceptance of the two Roundtables is quite clear. First, some actors that actively support the RSPO publicly oppose the RTRS. These actors include high profile organization like Oxfam Novib and Cordaid. In our interviews with NGOs the same pattern became visible, wherein the RSPO was believed to be more credible than the RTRS. A second difference is related to the character and content of the opposition. In case of the RSPO the standard is used by NGOs like Friends of the Earth and Greenpeace to attack members of the RSPO that violate the standard. In case of the RTRS, we do not observe this. The opposition exists mainly of NGOs publicly disapproving very strongly of

the standard itself. Third, internal and external NGOs in the RSPO seem to reinforce each other, while internal and external NGOs in the RTRS seem to frustrate each other (Hospes *et al.* 2009, Schouten & Glasbergen 2011). The interaction between internal and external NGOs in the RSPO often leads to more leverage for internal NGOs in the negotiations, while the public disapproval in case of the RTRS, often leads to frustration for internal NGOs.

2.8 Trust and collaborative advantage

The previous sections analyzed legitimization processes of the two Roundtables from an actor perspective. From this perspective it seems that trust and collaborative advantages are crucial agency related factors that influence legitimization processes. Trust encapsulates the emotional element of the interactions: the reduction of feelings of risk and vulnerability in the partnering process (Gray 2007, Glasbergen 2010b). The concept of collaborative advantage refers to doing business that is in one way or another profitable for all partners. Collaborative advantage encapsulates the synergy argument; for each partner the opportunities should outweigh the risks and they should be able to achieve something that they cannot realize on their own. In other words, potential partners will only collaborate if they supposed to gain from the partnership and they feel that risks and opportunities are fairly distributed (Gray 1996, Glasbergen 2010b).

The specific working method used in the RSPO allowed trust to develop more easily compared to the RTRS, which made it easier to get relevant stakeholders involved and to come to an agreement. First of all, because of previous collaborations, the three key actors of the RSPO had already established some level of trust. The Malaysian Palm Oil Association (MPOA) and Unilever therefore perceived WWF as a very reliable partner. If another NGO had initiated the RSPO, industry participation would probably have been limited (interview #10). In case of the RTRS the role of WWF is more contested. WWF-Netherlands is a member of the Dutch Soy Coalition, an organization that claimed that the large-scale monoculture model of soy production is inherently problematic, and that the only solution is to decrease soy consumption (Dutch Soy Coalition 2006). Soy producers had trouble believing that this position had been set aside by WWF and this limited the level of trust in the initial phases of the RTRS. Secondly, the RSPO developed from a small group of stakeholders that laid out the direction for the organization before being open to other stakeholders (RSPO 2002). In case of the RTRS no early commitments were made and participants simply agreed that exploring collaboration was worthwhile. It seems to be

beneficial to start out with a small group of actors who have already established some general level of trust. In this safe environment it is easier to start a collaborative process than in a situation of distrust with a large group of actors. After the start-up phase in both Roundtables similar issues of trust arose related to the perceived fairness of the partnering process, which relates to the issue of collaborative advantage.

The scale of the problems present in palm oil production and the desire for producers to maintain market position originally provided a significant potential collaborative advantage that allowed for the RSPO to develop as far as it has. The primary concern of WWF was deforestation, while Unilever was ultimately concerned about the security of their supply of raw materials (RSPO 2002). Retailers' main concern was to lower reputational risks. Reasons for palm oil producers to join the RSPO were to counter negative claims about palm oil, possible price premiums, market access and preferential purchasing policies. However, as our analysis shows, the early expectations on collaborative advantage have not all been met. A specific problem regarding collaborative advantage in both Roundtables has been the obligation to keep part of one's property free from agricultural use to halt deforestation. Without an economic compensation mechanism, many producers object to this (interview #31). Furthermore, the take-up of certified products by the market up to now has been very disappointing for producers.

This agency related explanation of legitimization processes of Roundtables is still incomplete and structural factors should be used to further explain the manifestation of legitimacy problems. The concept of structure in our case refers to the societal context in which the Roundtables emerge and shifts our focus to institutional factors that provide opportunities and constraints for the interactions to develop (Huijstee *et al.* 2007). Based on our document analysis and interviews we identify four structural factors that create opportunities or constraints to the collaborative interactions of Roundtables influencing the manifestation of legitimacy problems: the structure of the commodity chain; the type of lead firms; governmental regulations; and, the political embedding of NGOs. These factors correspond largely with the literature on value chain governance (e.g. Roberts 2003, Altenburg 2006, Coe *et al.* 2008, Vermeulen *et al.* 2008).

2.9 The structure of the commodity chain

A first factor that is assumed to influence the interactions is the structure of the commodity chain in terms of its mode of integration (Roberts 2003, Vermeulen *et al.* 2008). The more

vertically or horizontally integrated a chain is, the easier it is for a governance initiative to progress. Vertical integration means that one firm is in control of multiple processes along the chain, while horizontal integration means that fewer firms are involved at each stage along the chain (Vermeulen *et al.* 2008). The more diffused the supply base is, the larger the number of possible supply routes, thereby reducing interest in certification amongst manufacturers and retailers (Roberts 2003).

While the production and trade of palm oil are fairly concentrated, the production of soy is much more diffused and the chain is less integrated. About 50 large plantation groups account for 75% of global palm oil production. The refining and trading segments of the chain are even more horizontally integrated: 15 business groups control 75% of the global market (Aidenvironment 2008). Concentration is also reflected by the increasing vertical integration of groups. American companies have recently invested in upstream operations, while Malaysian plantation companies have made investments in processing and trading. The soy value chain has an hourglass structure in which a very broad number of actors are present at the top and bottom, with much greater concentration in the middle (*ibid.*). There are tens of thousands of soy producers, from many different countries, selling soy to a very small number of large trading companies. The companies Archer Daniels Midland, Bunge, Cargill, and Dreyfuss control around 80% of the processing and trading chain (Carrere 2006). Their customers are processors and food manufacturers as well as feed companies, farmers, and meat/dairy processors. These companies sell to a small number of retailers, who in turn link to large numbers of consumers. The impact of the hourglass structure in the soy value chain has been significant. Changing production practices ultimately means connecting with farmers; however, there are so many different types of soy farmers that it is very difficult to meaningfully engage with a significant representation. In contrast, the RSPO has been more successful involving a large percentage of producers, which can partly be explained by differences in the structure of the commodity chain.

2.10 The type of lead firms

Lead firms are actors who are in the position to set the parameters under which other actors in the chain operate (Humphrey & Schmitz 2001). Depending on how vulnerable a lead firm is towards critical consumerism, they may be more or less committed to different standards, and may use different combinations of pressure and support to enforce a standard throughout their supply chain (Altenburg 2006). Consumer-facing companies, especially the ones with a strong brand, are much more vulnerable to reputation damage

than other actors in the chain. However, even though the targeted companies are mostly at the end of the chain, power is not always located in the hands of those companies (Bair & Gereffi 2001, Dolan & Humphrey 2004).

In the palm oil chain, consumer-facing companies are in dominant positions. Unilever, the largest purchaser of palm oil, buying 4% of global production, has a very powerful position in the chain (Unilever 2008). Unilever plays a dominant role in the RSPO from the beginning onwards and its position in the palm oil chain helped producers demonstrate that the RSPO was meant as a progressive, but mainstream and business-friendly initiative. Unilever and other consumer-facing companies in the palm oil chain have inclinations to actively address sustainability, because of marketing benefits, minimizing reputational damage and securing long-term supply and are in a position to do so. In the case of soy, those companies that are presumably most interested in sustainability, the consumer-facing ones, are in a less dominant position. There are tens of thousands of soy producers, who sell their soy to a very small number of large trading companies that control most of the processing and trading and play the role of lead firms. These dominant actors in the chain are not brand-driven, like Unilever is (interview #24). The size and power position of these companies makes it difficult for downstream actors to significantly influence their activities. Furthermore, they are accustomed to bulk products and pricing based on measurable product qualities rather than issues such as sustainability.

A related factor is product visibility. The more visible a commodity is to consumers, the stronger their demands will be towards consumer-facing companies and the more they shape the process of governance in the chain (Coe *et al.* 2008). Although the products of the oil palm are used in approximately 50% of products in European supermarkets (WWF 2009), palm oil is not very visible to European consumers. Ingredient clarifications of products containing palm oil in the EU most of the time do not specify which exact oil is used, because the generic term 'vegetable oil' is used. The same is true for soy oil. Although soybean oil is an important ingredient in many food products, soybean demand is largely driven by the feed industry. These two products (oil and feed) of the soy plant reach the consumer in different ways. Soy is used in large quantities as animal feed to produce meat or dairy products, but is not an ingredient in those products and therefore not visible to consumers. As such, retailers, manufacturers, and meat processors have less of a commercial incentive to strongly push for changes upstream³.

³ Products that are made of soy (and sold in Europe) in which soy beans are more recognizable, like soy drinks or

2.11 Government regulations

There are many regulatory drivers and constraints that may influence the behavior of firms and their attitude towards sustainability initiatives, including taxation policies, national regulations, trade policies, and regulations on property rights (Altenburg 2006, Vermeulen *et al.* 2008). Subsidies and taxation policies may benefit or hinder supply chain relations and are highly relevant for the sourcing behavior of firms (Altenburg 2006).

Palm oil is grown in countries that do not subsidize the agricultural sector, but rather tax the export of agricultural products (interview #30). Soy, on the other hand, is one of the most heavily subsidized crops in the United States commodity programs (Wise 2005). By contrast, the soy industry in Brazil is subject to taxes. The existing tensions in the WTO negotiations between these countries (the two biggest producers of soy) about export subsidies for agricultural products directly translate into the roundtable discussions and lead to a lack of trust among producers (interview # 30). Furthermore, because American producers are subsidized, they have less of an incentive to connect to new markets, as their competitiveness is guaranteed. Tensions like this have never been a problem in the discussions on sustainable palm oil, resulting in totally different Roundtable dynamics and more favorable conditions to include stakeholders.

The RSPO standard requires that a High Conservation Value (HCV) assessment is made of an area before it is developed for the production of oil palm. If part of the area is considered HCV area, it has to be preserved and cannot be planted. Indonesian producers perceive this part of the P&C as a risk to their operations. Producers get a concession from the Indonesian government to develop a certain area within a certain time frame. They fear if they don't develop part of the area, the Indonesian government will transfer the concession to another company, which will then develop this HCV area that will be located inside their plantation (interview #10, #30). According to a producing company that already preserves HCV areas these are groundless fears (interview #35), but whether or not these fears are justified or not, they affect the legitimization process of the RSPO.

tofu, seem to have different types of certification or other means of guaranteeing that the soy used is not contributing to sustainability problems. This might not only be related to the visibility of soy in these products, but also to the type of consumers that buys these products.

2.12 The political embedding of NGOs

Hospes *et al.* (2009) conclude that the relations between business and NGOs in the case of the RTRS have been a threat to the process, while similar relations in case of the RSPO have pushed the process forward. This difference can be partly explained by the political embedding of NGOs in the relevant continents. The political embedding of NGOs in South-East Asia (who are relevant stakeholders for the RSPO) is completely different from the political embedding in South America (which is a relevant audience for the RTRS) (interview #33, #32).

The main difference relates to the attitudes of civil society organization towards market actors. In general NGOs tend to be more collaborative or more confrontational toward businesses. NGOs in South America have a long history of campaigning against large-scale agri-businesses and are very distrustful of market initiatives such as the RTRS. As mentioned before, they see it as a symbol and extension of power of large agricultural companies (interview #30). NGOs in South America therefore started protesting against the RTRS instead of becoming involved as one of the partners in the process. The position of NGOs in South-East Asia is totally different as civil society organizations were less developed and less influential in this region and tend to be more collaborative towards market actors. Therefore, the initiation of the RSPO has provided a new platform for NGOs to voice their concerns; a space that was not available before (interview #33). This difference between the two regions reinforced itself under influence of Northern and large international NGOs, as it is a reason for them to support the inclusion of NGOs in the RSPO to strengthen the position of civil society in South-East Asia and to stay out of the RTRS process.

2.13 Conclusions

Most research on legitimacy of private governance arrangements takes a normative approach in which the legitimacy of a specific arrangement is evaluated. This approach is limited, because legitimacy is not an overall characteristic of a governance arrangement, but rather an attribute that is created in an interactive process. To better understand these legitimization processes in Roundtables, this chapter analyzed the practices through which legitimacy is created by looking at the interactions between the actors in Roundtables and the institutional context in which these interactions take place. This approach revealed a variety of legitimacy problems.

First, it can be problematic to align different views on sustainable development in order to reach agreement about the way in which the industry will be governed. It is fundamental for a legitimization process that stakeholders come to a common problem definition and accompanying rule system. Although this was a difficult process in both analyzed cases, these Roundtables have managed to put a rule-system in place by taking on a pragmatic approach. Problems and solutions were framed in specific ways and some contentious issues were left out.

Second, while decision-making by consensus is a very important principle for Roundtables, reaching consensus is not always possible, certainly not when the credibility of the arrangement as a whole is at stake. In some cases majority voting and accepting the exit of certain stakeholders is the action strategy that is chosen. But since the resignation of important stakeholders is a threat to the legitimization process of the arrangement, in other cases problems are solved outside of the Roundtable process. This allows the sanctioning of nonconforming behavior, while at the same time keeping all partners in the process. Both strategies were present in our case studies.

Third, problems regarding legitimization arise from perceptions regarding costs and benefits of collaboration. For relevant stakeholders to get and to remain involved in the process their expectations and perceptions about collaborative advantages must be positive. For businesses this relates mainly to reducing negative publicity and gaining access to new markets, while for NGOs this mainly relates to expanding their moral influence. In our cases, especially producers felt that they had to bare most of the costs of the partnering process. This is related to the fact that Roundtables focus on certification on production level, instead of looking at all stages of the production process and certifying every 'link' in the chain. Our analysis shows that the consequences of perceptions of an unfair distribution of costs and benefits become especially visible in the implementation phase of the rule system. In that phase stakeholders experience whether they really gain more by complying with the rules than by continuing business as usual.

A fourth, related, legitimization problem concerns the implementation of the created rule system. The analyzed Roundtables are currently unable to get the majority of their members to comply with the standard, let alone the majority of the whole industry. Primarily, this is due to the voluntary character of private governance arrangements. Roundtables are not able to sanction member behavior to force them to comply with the established rule-system. As long as 'business as usual' is allowed, it is easier for producers

as well as for buyers. It will be extremely difficult (or at least take a long time) for these Roundtables to change a whole market.

Fifth, in order to be accepted as an authoritative agent the created rule system must not only be credible for market parties, but also for other audiences. If this is not the case counter reactions are likely to develop which jeopardize the legitimization process of the arrangement as well as the credibility of individual Roundtable members. Especially companies are vulnerable to reputational damage by campaigning external NGOs, but negative campaigns form a risk to internal NGOs as well. In our cases we saw two different scenarios regarding this point. One in which internal and external NGOs seem to reinforce each other and bring the legitimization process forward (RSPO), and one in which internal and external NGOs frustrate each other and undermine the legitimization process (RTRS). Another difficulty for Roundtables is the role of consumer markets in some importing countries that, because of political ideology and context, are not (yet) ready to buy products that have extra value regarding sustainability (i.e. China).

These legitimization problems can be partly overcome by managing the process and adjusting the working methods of a Roundtable to ensure that trust and perceptions about collaborative advantage develop more positively. However, structural factors may constrain the development of the legitimization processes of these arrangements, thereby limiting the management options to enhance the creation of legitimacy.

The identification of these legitimization problems shows that taking a more practice-based approach to studying legitimacy of private multi-stakeholder governance provides additional insights that go beyond merely assessing the legitimacy of an arrangement based on normative criteria and shows how legitimization processes can be enabled or hindered by factors on an actor and on a more institutional level. These types of explanatory factors therefore add a new layer to the available theory on legitimization processes of private multi-stakeholder governance.

The findings of this chapter have some implications for the broader application of the Roundtable as a governance model. Currently, we see many Roundtables being initiated by Northern actors in a diverse range of commodity chains. In order to bring about sustainable change in an agricultural sector it is important to have a balanced participation of Southern and Northern actors in these Roundtables. Even if this balanced participation is secured, there are still risks in using this governance model, since structural factors influence their legitimization processes. Therefore, practitioners, including agri-food

managers, should first conduct an institutional analysis of the context in which a governance initiative is meant to operate. This analysis should at least include a thorough commodity chain analysis, an analysis of regulations affecting this chain and an analysis of the nature of civil society organizations in main production areas. If there are many potential hindering factors for the legitimization process of a Roundtable a different action strategy should be considered or these factors should be resolved.

The managerial impacts of our study mainly relate to adapting to potential hindering factors for the legitimization process of a Roundtable. Structural factors are assumed to be inalterable on the short-term and therefore managerial efforts should focus on the actor-based factors trust and collaborative advantage. These actor-based factors are not independent of structural factors. The structure of the commodity chain, the type of lead firms in the chain, governmental regulations, and the political embedding of NGOs all influence the degree of collaborative advantage for different groups of stakeholders, while trust building is primarily influenced by the type of lead firms in the chain, governmental regulations, and the political embedding of NGOs. When the institutional analysis shows that the structure of the commodity chain, the type of lead firms in the chain, governmental regulations, and the political embedding of NGOs in a specific industry are not beneficial for the legitimization process of a Roundtable, managing efforts should focus on increasing the perceived collaborative advantage for all stakeholder groups. When the analysis identifies the type of lead firms in the chain, governmental regulations, and the political embedding of NGOs as factors that could potentially have a negative influence on the legitimization process of a Roundtable—then managerial efforts should focus on increasing the level of trust between all stakeholder groups.

The research in this chapter is exploratory in nature and although our conclusions are empirically valid, they are based on two case studies and are therefore lack statistical validity. While our research has shown that Roundtables can place sustainability on the agenda of an industry and develop and implement a certification scheme, their legitimization processes can be negatively or positively influenced by different institutional settings. Further research should therefore specifically address the relative importance of individual structural factors on legitimization processes of Roundtables.

Positioning Chapter 3

‘Creating legitimacy in global private governance: The case of the Roundtable on sustainable palm oil’

Chapter 3 aims to answer the following research question:

How is legitimacy created through legitimization processes in global private governance arrangements?

After the empirical exploration of processes of legitimization in Chapter 2, Chapter 3 presents a further operationalization of the concept of legitimacy. This chapter is theory-laden and delves deeper into the different dimensions of the legitimization process of one of the cases studied in the previous chapter: the Roundtable on Sustainable Palm Oil (RSPO). Chapter 3 suggests that understanding legitimization processes of private governance initiatives requires a multi-dimensional approach. This suggestion has been operationalized in three aspects that can be used to better understand such processes: legality, moral justifications, and consent/acceptance. These aspects are based on different theoretical traditions and are applied in an analysis of the process of creating legitimacy by the RSPO. This analysis reveals the characteristics of the legitimization process of the RSPO and shows the value of a multi-dimensional approach. The three perspectives complement each other and deepen our insights in legitimization processes by revealing tensions and trade-offs in the different ways in which Roundtables can create legitimacy.

This chapter was written in collaboration with Pieter Glasbergen, and has been published in *Ecological Economics*. The full reference is:

Schouten, G., & Glasbergen, P. (2011). Creating legitimacy in global private governance: The case of the roundtable on sustainable palm oil. *Ecological Economics*, 70(11), 1891-1899.

3 Creating legitimacy in global private governance: the case of the Roundtable on sustainable palm oil

3.1 Introduction

Private governance arrangements addressing sustainability have emerged in many global commodity chains over the past three decades. Private governance is broadly defined as “forms of socio-political steering in which private actors are directly involved in regulating - in the form of standards or more general normative guidance - the behavior of a distinct group of stakeholders” (Pattberg 2006, p. 591). Private governance arrangements focus on rules and regulation, not on spontaneous, uncoordinated actions (e.g. market interactions) and may organize political spaces that are comparable to public governance arrangements (ibid.).

The institutionalization of private governance creates new global governing patterns, which raises questions about their legitimacy. Legitimacy refers to justifications of authority; it is “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed systems of norms, values, beliefs and definitions” (Suchman 1995). As also discussed in the introduction to this special section, the legitimacy challenge is particularly significant for private governance initiatives (Biermann & Gupta 2011). First, the voluntary nature of private governance makes it more dependent on the justification of authority than other forms of control. Contrary to governments, who can use violent force to ensure law compliance, voluntary private governance initiatives rely mostly on legitimacy to ensure compliance. Second, legitimacy is an important precondition for efficacy and efficiency, on which the scientific literature focuses for a large part. Legitimacy contributes to the effectiveness and stability of institutions, and is regarded as a fundamental condition for rule acceptance. Third, actors with decision-making power in private governance initiatives are not only accountable to those who are directly affected by their regulations but also to their shareholders or members. Moreover, there are often no formal mechanisms that allow these members to decide on the policies of the organization (Biermann 2007). The private goals of these actors might conflict with the public goals they claim to strive for, and this might lead to an accountability conflict. Additional complications arise when private

governance initiatives designed in one part of the world address issues in another part of the world.

A specific form of global private governance is the 'roundtable'. Roundtables are private arrangements with the aim to improve the sustainability of a global commodity chain. They are multi-stakeholder platforms where only private parties - business and non-governmental organizations (NGOs) - have decision-making power. Governmental agencies and scientists can only participate as observing members or advisors. Examples include the Roundtables on sustainable palm oil (RSPO), responsible soy (RTRS), better cotton (BCI), better sugarcane (BSI) and sustainable biofuels (RSB). Instead of creating an additional niche market, as is often the case with private global governance initiatives (Bitzer *et al.* 2008), roundtables aim to make an entire commodity chain more sustainable. The current generation of roundtables is preceded by the forest and marine stewardship councils (FSC and MSC) that are based on the same kind of model. Following Cashore and Bernstein, these initiatives can be labeled 'non-state market driven' (NSMD) governance systems. Under NSMD governance, governing authority is granted and compliance comes about through the market and its supply chain (Cashore 2002, Bernstein & Cashore 2007).

Little is known about how legitimacy emerges in such private governance initiatives. This Chapter scrutinizes the legitimization process of a roundtable as social practices through which an institutional form and a specific action strategy are developed. The Roundtable on Sustainable Palm Oil (RSPO) serves as our case study. It is a European-driven initiative of the World Wide Fund for Nature (WWF) and Unilever, which connects Southern production and Northern consumption, and which is generally regarded as the one that set the trend for the initiation of roundtables in other commodity chains.

Global demand for palm oil is growing rapidly. Palm oil is consumed worldwide and constitutes the vegetable oil with the highest level of market penetration. The products of the tropical oil palm are used in approximately 50% of the products in European supermarkets and have many usages for food, feed, fuel, cosmetics, detergents and the chemical industry (WWF 2009). Whilst Indonesia is the largest producer of palm oil in the world, Malaysia is the leading exporter of palm oil, accounting for 46% of global exports. Together they make up over 88% of palm oil exports. China, the European Union, India and Pakistan are the largest importers of palm oil (MPOB 2007).

The production of palm oil is associated with many sustainability issues, including deforestation, erosion of biodiversity and violation of social rights. An analysis of Koh and

Wilcove (2008) suggests that during the period 1990–2005, 55%–59% of oil palm expansion in Malaysia, and at least 56% of that in Indonesia occurred at the expense of forests. NGO campaigns against production methods and expansion of palm oil production, combined with the conviction of businesses that a steady supply in the future would necessitate a more sustainable production, led to the development of the RSPO as a multi-actor arrangement to improve the conditions of palm oil production and expansion.

This Chapter aims to answer the question of how legitimacy emerges in the case of the RSPO from three perspectives found in academic literature: the legal approach, which focuses on legality; the political philosophical approach, which concentrates on moral justifications; and the sociological approach, which addresses the process of creating acceptance of a rule-system (see also Beetham 1991). Each of these perspectives highlights a specific aspect of the process of legitimization.

The Chapter is based on an analysis of RSPO documents and minutes; documentation of stakeholders; and over 20 semi-structured interviews with RSPO members, RSPO Executive Board members, and NGOs working on palm oil issues, including both supporters and critics of the RSPO. A list of interviewees can be found in the Appendix.

3.2 Perspectives on the creation of legitimacy

Legitimacy arises in a multi-dimensional process of social interaction. In the relevant literature these dimensions are taken up as specific aspects, which are assumed to influence the process of creating legitimacy. The first approach assumes that legality is important and studies the rules that direct actor interactions. The second approach emphasizes the moral underpinnings of the interactions and the activities that are the result thereof. The third approach assumes that consent and acceptance of the results of the interactions among different audiences are vital. These perspectives have their roots in different scientific traditions: law, political philosophy, and sociology/political science (see also Beetham 1991, Morton 1998, Barnard 2001). This chapter draws on these three perspectives to explain the legitimization process of the RSPO, and to show that these aspects of legitimacy are important for achieving overall legitimacy of the Roundtable.

Legality is often seen as the first step towards legitimizing a rule-system (Beisheim & Dingwerth 2008). It is the formal expression of rights, duties and expectations (Meidinger 2007) and the conformity of the rule-system to these rules of power; power should be acquired and exercised according to these rules (Beetham 1991). In comparison, in a

constitutional state no one, in theory, can exercise authority without being accountable or being checked. In that case, the state designs the framework within which private activities, including forms of private governance, can take place and it is the only form of organization that can make binding decisions and enforce them with sanctions. These 'rules of power' secure the legitimacy of state behavior (Glasbergen 2007). The term legality can also be applied, outside the realm of states, in the context of private governance, since certification-based governance systems engage in a specific type of law making (Meidinger 2007).

What is perceived as legitimate differs across time, place and organizational context, making it impossible to determine a set of criteria for legality that is generally applicable to all governance institutions. However, some dominant legitimacy demands regarding the legality of a rule system can currently be recognized for global governance organizations that are linked to Western democratic practices. There is an increasingly universal acceptance of these norms, also outside the 'Western world' (Koppell 2008).

These norms include (ibid.):

- Representation: Those governed need to have a voice in decision-making and the right to be represented.
- Participation: Those governed need to have the opportunity to observe and comment on the activities of the governance initiative.
- Neutrality: All stakeholders involved need to be treated equally and consistently.
- Procedural regularity: Decision-making processes need to take place according to a set of general procedures: Decisions need to be transparent, open for public scrutiny, and there needs to be a right of appeal.

Roundtables have two opportunities to improve their legality. First, they may develop rules of power that are based on these norms. These rules of power can be seen as functional equivalents of the rules fulfilling the same functions in liberal democratic states. Second, they may connect to formal government regimes in order to be recognized by them as viable alternatives and in this way be 'legalized'.

The second perspective on creating legitimacy focuses on *moral justifications* of an institution and the actions undertaken. Political philosophers tend to focus on normative principles for rights to govern. In this approach, governing is legitimate when it is morally justifiable according to some general principles. An example of such a principle is

conformation to a minimal standard of justice, understood as the protection of basic human rights. In other words, political philosophers debate the moral principles on which 'good governance' ought to be based. These normative considerations are instrumental in creating support for governance and are thereby vital in the legitimization process of any governance system. Because this research aims to describe and explain the legitimization process of a Roundtable, this chapter will not provide normative principles that should be applied by the initiative, but rather scrutinizes the moral justifications that are used by the various stakeholders in the Roundtable process.

Transnational governance arrangements, such as roundtables, connect actors from widely separated locations throughout the globe and will be confronted with different belief systems. To improve legitimacy from the perspective of justification, these actors need to fulfill at least two conditions. First, they need to define why they are the right actors to govern the commodity chain. In practice this will imply that different reasons for participation should be accepted and seen as an interconnected whole. Second, they need to create a basic understanding and common belief related to what they are trying to govern. This second prerequisite refers to the content of their common activities.

The third perspective on creating legitimacy focuses on *consent and acceptance* by different audiences to the private governance initiative. From a sociological point of view an institution is legitimate when it is widely believed that it has the right to rule. Consent is important in the analysis of legitimacy because active expressions of consent confer legitimacy, while the withdrawal or refusal of consent will erode legitimacy (Beetham 1991). This refers to the process of implementation and acceptance of a rule-system. Several related distinctions have been made regarding this process; for example between internal and external legitimacy (Provan & Kenis 2007); input and output legitimacy (Scharpf 1997); and Tier I and Tier II audiences (Suchman 1995, Cashore 2002). Internal legitimacy, input legitimacy and Tier I audiences refer to participating stakeholders and the participatory quality of the interactions. External legitimacy, output legitimacy and Tier II audiences refer to outside actors and the extent to which they accept the new initiative as an entity on its own as well as the problem-solving capacities of its activities.

Hurd (1999) considers three general reasons why an actor might accept regulations: first, because the actor is coerced to do so; second, because actors recognize the rule to be for their own benefit; third, because the actor considers the regulations to be legitimate and agrees that they ought to be obeyed. Cashore (2002), following Suchman (1995), distinguishes between different types of legitimacy that audiences may attribute to private

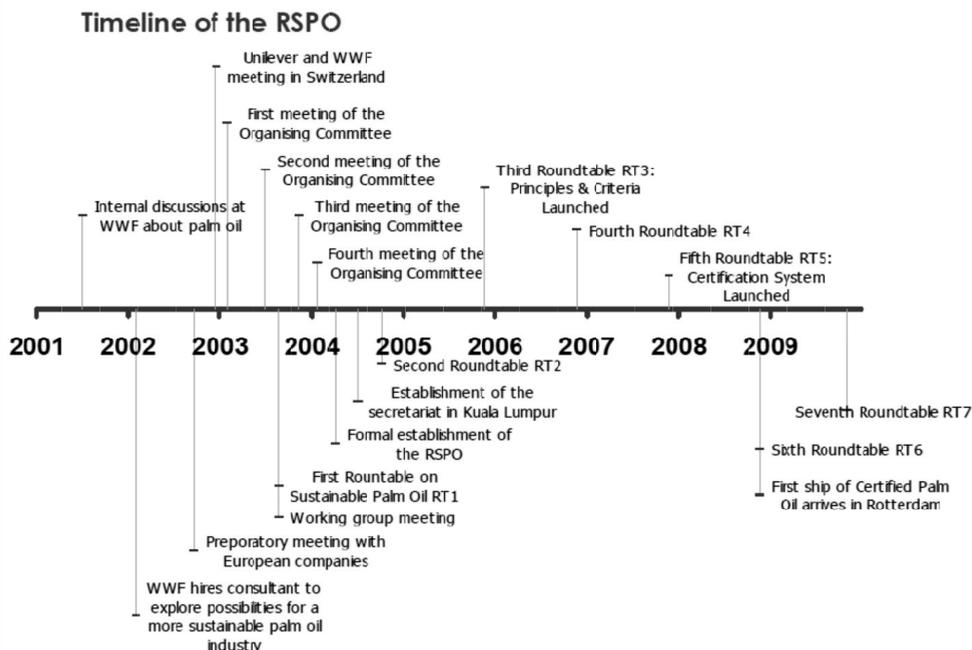
governance initiatives. Of relevance here are moral legitimacy, which reflects a positive normative evaluation of the organization and its activities, and cognitive legitimacy. The source of moral legitimacy lies in values developed within Tier II (external) audiences but is often displayed in Tier I (internal) audiences through ideas about what is morally acceptable or unacceptable. Cognitive legitimacy is based on comprehensibility and is granted because it would be literally unthinkable for things to be different.

This third perspective looks upon RSPO's ability to become an authoritative agent in its issue field by creating moral and cognitive legitimacy. First, RSPO's ability to implement their criteria for sustainable palm oil as an indicator of consent from Tier I (internal) audiences is addressed. Second, RSPO's ability to ensure acceptance of Tier II (external) audiences is looked into.

Legitimacy is not an all-or-nothing affair. All three perspectives contribute to understanding the processes of creating legitimacy in a different way. Therefore, if we want to know what makes a governance initiative legitimate we have to look at each of these three components and their interactions.

3.3 The emergence of the RSPO – a short historical overview

Sustainability issues in the palm oil industry motivated WWF in the late 1990s to focus on palm oil in their activities. WWF-Switzerland hired an external consultant to explore the possibilities of a private sector partnership for setting a standard for sustainable palm oil. In September 2002, representatives of retailers, food manufacturers, palm oil processors and traders, financial institutions and WWF-Switzerland came together in London (RSPO 2002). At this meeting, participants agreed on the objective of promoting sustainable palm oil, both relating to the management of existing plantations and to the establishment of new ones (RSPO 2002). In December 2002, the consultant, WWF and Unilever worked out the idea of a roundtable and established an Organizing Committee to set up the first Roundtable conference (see Figure 3.1 for a timeline of the RSPO).

Figure 3.1: Timeline of the RSPO

This first conference in 2003 brought together over 200 delegates from 16 countries and in April 2004 the RSPO was formally established (RSPO 2004b). During the General Assembly in 2005, the Principles and Criteria were ratified by the members, who represented approximately one third of global palm oil production (RSPO 2005b). The fifth Roundtable meeting (2007) witnessed the launch of the RSPO certification system for sustainable palm oil and the RSPO began to accredit the first certification bodies to carry out audits (RSPO 2007b). The first certified sustainable palm oil became available in November 2008. The seventh Roundtable meeting in 2009 saw a record number of 811 participants from more than 20 countries.

3.4 Creating legitimacy: the perspective of legality

From the legality perspective the RSPO is studied from two angles:

- a) The way the arrangement developed rules of power regarding representation, procedural regularity, participation, neutrality, and accountability.

b) The formal relationships of the arrangement with the broader political systems it is part of.

3.4.1 Rules of power

The development of the RSPO shows a process in which informal rules slowly evolved into more formal rules of power. This led to a specific organizational structure, which ensures that RSPO activities are generated through a process structured by publicly known requirements.

Representation

One of the first issues was to decide who should be represented in the RSPO. At the first meeting of the RSPO in London (2002) only European stakeholders were present. WWF was in favor of including European demand-side actors only, but others felt that the influence of a solely European initiative would be limited, given that two thirds of global palm oil production comes from Asian markets (RSPO 2002). Instigated by Unilever, it was decided that the Roundtable would include all actors from the palm oil supply chain.

To get Asian stakeholders involved, WWF contacted the Malaysian Palm Oil Association, which joined in early 2003. Integrating Indonesian producers proved to be more difficult than Malaysian producers. The Malaysian palm oil industry is generally more developed and better organized. The Malaysian Palm Oil Association contacted GAPKI, the Indonesian Palm Oil Association, and convinced them to join the RSPO in 2004. One of the reasons for GAPKI to affiliate with the RSPO was to avoid reputational damage of the Indonesian palm oil industry.

Equal representation of all groups has not always been easy. For the development of the principles and criteria the Executive Board appointed a criteria working group. The criteria working group consisted of producers, commodity chain actors and investors, and environmental and social NGOs. During the first meeting it was recognized that Indonesian producers lacked representation, that producers outnumbered social and environmental groups, and that processors and some social sectors were not directly represented, including trade unions, smallholders, indigenous people and women's groups. It was decided that procedures for consultation and decision-making should overcome the imbalances in representation (RSPO 2004c).

Procedural Regularity

The second important issue was to decide on the internal organization of the RSPO. At the first meeting of the Organizing Committee in 2002 the participants - at that time all

European - unanimously agreed on initial 'rules of the game': decisions are to be taken on the basis of consensus; all public communications must be agreed upon by all participants; the group should strive for maximum transparency; and any impression of forming a cartel must be avoided (RSPO 2003b). The members of the Organizing Committee also had to achieve consensus on how the RSPO would be governed internally. They decided to distinguish among seven groups within the RSPO: oil palm growers, palm oil processors and/or traders, consumer goods manufacturers, retailers, banks/investors, environmental NGOs, and social/development NGOs. Organizations wanting to become a member of the RSPO would have to apply as one of these groups or as an affiliate member.

The division of seats for each group in the Executive Board generated extensive discussion and turned out to be one of the most difficult issues in the history of the RSPO. "The negotiations quickly moved past the idea of equal representation from each group, and the Malaysian Palm Oil Association argued for more weight for producers and NGOs also wanted more seats due to their importance as opinion makers" (Nikoloyuk 2009, p. 56). The negotiations resulted in two seats assigned for every stakeholder group, except for the producers, who received four seats. NGOs were pleased by the fact that together they got as many seats as the producers. For both the producers and NGOs there are always another 8 seats to be considered in the negotiations.

This form of functional representation is not unique in private governance initiatives. The Forest Stewardship Council (FSC) uses a similar structure, where members are split up into three chambers: environmental, social and economic chambers, which are further split into the sub-chambers 'North' and 'South'. The purpose of the chamber structure is to maintain a balance of voting power between different interests (and avoid business domination) without having to limit the number of members (Pattberg 2006, Bernstein & Hannah 2008).

In 2004 the RSPO was formally established under Article 60 of the Swiss Civil Code. The statutes and by-laws were downloaded from the website of the Swiss government and adjusted to the context of the RSPO. The RSPO consists of a General Assembly, an Executive Board, a Secretariat and several working groups. The General Assembly is the highest decision-making body of the RSPO and consists of all ordinary members, who all have one vote. General Assembly meetings are held annually and decisions are made by majority vote. Contrary to the FSC, in the RSPO one group can in theory dominate the General Assembly, since there are huge differences in the number of members per constituency group. There are approximately seven times as many members in the category

of processors and traders as there are NGOs. However, consensus-based working groups are used to prevent this from happening.

The Executive Board is chosen by the General Assembly and consists of representatives of ordinary members. Contrary to the General Assembly, the Executive Board acts by consensus vote. The Executive Board elects a president, a vice-president and a treasurer, who are designated for a period of two years. The Executive Board appoints the Secretary-General and the secretariat staff.

Participation

The third issue regards participation in internal decision-making. Particularly the working groups present important mechanisms for participating in the RSPO. They consist of ordinary and affiliate members and possibly other stakeholders, and are aimed at reaching consensus on contentious issues. Members may participate in different working groups at the same time. Each working group needs to submit a report on its activities and financial situation to the annual General Assembly meeting. Examples of RSPO working groups include the criteria working group, the verification working group, and the communication and claims working group.

Next to working groups, the use of public consultations is a common mechanism for participation within the RSPO. The process by which the principles and criteria for sustainable palm oil were developed provided considerable opportunity for input from any interested person or organization. This was facilitated by at least two rounds of public consultation. Moreover, members of the criteria working group contacted key stakeholders directly to ask for feedback.

Accountability and Neutrality

The fourth issue of importance relates to accountability and neutrality. Rules developed in this area are a direct consequence of a conflict in 2005, which led to the adoption of a Code of Conduct and a Grievance Procedure. This conflict regards the workers of a Musim Mas plantation in Indonesia, who went on strike, leading to the dismissal of 701 employees, the eviction of their families from plantation estate housing, and the dismissal of their children from estate schools. After these events the International Federation of Building and Wood Workers (IFBWW) called on the RSPO to address the situation. Musim Mas, a member of the Executive Board at that time, refuted all claims made by the IFBWW in a presentation to the Executive Board and argued for a Code of Conduct and a Grievance Procedure (RSPO 2005c). The Executive Board was not sure what the IFBWW expected from the

RSPO if the allegations turned out to be true, because membership requirements were still unclear.

The Code of Conduct lists all the requirements for membership in the RSPO. The most important requirement demands members to support, promote and work towards the production, procurement and use of sustainable palm oil. Members are required to report annually on their progress in implanting the Code of Conduct. Breaches of the Code or of the by-laws and statutes of the RSPO may lead to exclusion from the organization. In practice, however, very few members submit annual reports, and the requirement of reporting has not been enforced. Moreover, the Code of Conduct does not contain any provisions for measuring, verifying, or enforcing members' progress. This contrasts with many other NSMD governance systems, which generally develop mandatory standards for actors who sign on to the system (Bernstein & Cashore 2007). This lack of enforcement reduces the legality of the RSPO in the sense that the formal expression of duties and expectations are hardly put into practice.

The Grievance Procedure was a way to further guarantee accountability. The objectives of the Grievance Process are to provide a platform for RSPO to address complaints against all RSPO members, to ensure that any alleged breaches of specified RSPO Statutes, by-laws, motions approved by the General Assembly or any other approved articles, including the Principles & Criteria for Sustainable Palm Oil Production and the RSPO Code of Conduct, are impartially and transparently addressed, and in cases where deemed necessary and appropriate, to provide recommendations for action through forming a Grievance Panel.

3.4.2 The RSPO and the wider policy arena

Next to formulating rules of the game, legality can be induced by creating formal connections with governments. As representatives of governmental agencies are excluded as RSPO-members, one way was precluded from the start.

Despite the aim of numerous national governments to make global commodity chains more sustainable, national regulations concerning the sustainability of imported products are often not in place. This is partly due to the limited legal and political space for imposing trade barriers within WTO law. Although the shrimp-turtle and other cases illustrate that there is some regulatory space to achieve an environmental policy goal (Yavitz 2001), governments fear that a threat to sustainability in a producing country is not deemed a valid reason for an importing country to set a trade barrier. This fear results in national governments leaving the formulation of sustainability criteria for palm oil and other crops

to market-based initiatives (Hospes *et al.* 2009). However, current WTO agreements do not prevent NSMD governance systems from “gaining recognition as international standardization bodies” (Bernstein & Hannah 2008, p. 604). To prevent the Roundtable process from being slowed down, more politicized and hampered by international trade treaties, governments were excluded from the negotiations on the formulation of the criteria for sustainable palm oil. But although the RSPO certification is formally independent of states, its second principle states that RSPO certified companies need to comply with all applicable local, national and international laws and regulations. In this way the RSPO can be seen as a way to support state-based legal systems, while drawing on state legitimacy (cf. Meidinger 2007).

Despite the fact that governments cannot become ordinary members of the RSPO, there are still multiple relationships between governments, the RSPO and RSPO-members. For example, the Malaysian Palm Oil Association reports to the Malaysian minister of plantations and GAPKI - the Indonesian Palm Oil Association - reports to the Indonesian minister of agriculture. The sixth Roundtable conference was attended by a Chinese delegation, led by the Chinese chamber of commerce. In several Roundtable conferences, government officials gave speeches, by which they expressed their recognition of the value of the RSPO.

Governments also play another important role: part of the RSPO’s work is funded by governments. For example, the Task Force for Smallholder Certification Support Network could commence its work due to the funding received from the Dutch government’s Sustainable Trade Initiative. The ‘framework for drafting criteria for sustainable palm oil’ was funded with money from GTZ, a German development cooperation organization under the German federal government. The Malaysian government pledged about 15 million dollars to help smallholders move towards sustainable practices.

In 2008, the Dutch Minister of Agriculture, Nature and Food Quality said in response to a question of a member of the House of Representatives that “the RSPO is an example of a promising international voluntary initiative of producers, consumers and NGOs (...)” and therefore it would not be necessary to formulate regulatory and legislative frameworks by the Dutch government to address the import of unsustainable palm oil (Tweede Kamer 2008).

3.4.3 Conclusions on legality

As the above sections show, the RSPO is fairly legalized. There is a considerable reliance on formal rules regarding rights, duties and expectations (cf. Meidinger 2007). It proved to be difficult to represent every stakeholder group in the Roundtable, specifically smallholders (RSPO 2004c). Another weaker aspect of RSPO's legality is the Code of Conduct that lacks provisions for measuring, verifying, or enforcing members' progress. Although multiple governments recognize the RSPO as an important player in the field of sustainable palm oil, some major palm oil importing countries, including Pakistan, continue to show no interest.

3.5 Creating legitimacy: the perspective of moral justification

From the perspective of moral justifications, participants in this governance arrangement need to morally justify that they are the right actors to govern and garner moral support for their governance goals.

3.5.1 Morally justifying why they are the right actors

Making rules concerning the public sphere is usually seen as the task of governments. So why did these private actors consider themselves the right actors to take up sustainability issues in the palm oil industry?

While all participants share a common interest in a more sustainable palm oil industry, they do so to different extents and with different motivations, ranging from very pragmatic to primarily ethical. At the preparatory meeting of the RSPO, the different stakeholders present gave their justifications for joining the Roundtable. These justifications all fit the mission statements of these individual organizations. WWF, for example, justified its participation by referring to its objective of protecting the environment and preventing conversion of high conservation value forests. Unilever explained that their main motive to join the initiative was to ensure the long term supply of palm oil, while retailers Migros and Safeway pointed out that they joined the process to improve their business reputation (RSPO 2002).

These justifications to start a process of collaboration already show a mix of moral and economic arguments. These arguments become even more complex if we take producer views into account. The Malaysian Palm Oil Association, representing Malaysian producers, saw a need to engage with the RSPO to counter NGO campaigns about deforestation and land clearing. At first they hesitated to join the RSPO because, by doing

so, they would acknowledge that there were unsustainable practices in the industry. However, they expected that if they engaged with NGOs and provided them with proper information, they might be able to isolate the 'bad' producers. Moreover, the European market is significant, and particularly producers from Malaysia saw the RSPO as a means to link them to the European market more strongly. The Indonesian Palm Oil Association, GAPKI, joined because they did not want the Indonesian industry to compare unfavorably to Malaysia's, even though many Indonesian plantations sell to Asian markets (Nikoloyuk 2009).

Though every actor in the Roundtable has its own individual reason to participate, they share a common *moral* justification. This is based on the idea that *together* they are the right actors to tackle the problems in the palm oil industry. All participants have a vested interest in palm oil, which is assumed to make the Roundtable the right institution to govern the palm oil industry.

3.5.2 Morally justifying their goal

At the heart of the RSPO activities lies the concept of sustainability, which has been discussed from the first meeting onwards. Environmental problems in the palm oil industry were the reason for WWF to start the initiative and they thus focused on environmental issues. However, at the preparatory meeting in London, it was agreed that sustainability for palm oil also includes social and economic factors and that the discussion on sustainable palm oil could not be limited to forest conversion only. It was stressed that palm oil production and expansion do not only have negative effects, but that they also contribute to poverty reduction (RSPO 2002).

While European actors focused mostly on deforestation and biodiversity loss, Malaysian actors had a strong focus on the way palm oil can contribute to poverty alleviation. This became very clear in the speech of a representative of the Malaysian producers at the first Roundtable conference:

‘Poverty threatens the survival of the poorest. To appeal to them to join in saving the planet is pointless unless we link it to their own survival. Simply to tell those at the margin of existence not to cut down the forest or not to have many children when they see both as necessary to their survival is to be not only insensitive to their predicament but also downright provocative’ (RSPO 2003a).

Another view on sustainability from Malaysia stressed the fact that the palm oil industry had already existed for over 100 years, which could be seen as the ultimate proof of its sustainability.

From the beginning it was clear that it would be extremely difficult to agree on the contribution of palm oil to deforestation. Malaysian palm oil producers stated that they were not destroying virgin forest, as most of the land converted to oil palm plantations used to be agricultural land used for rice or rubber production. While agreeing with this claim, environmental campaigners pointed to the enormous expansion of palm oil plantations on Kalimantan (Indonesia), which they claimed was driven by Malaysian-owned companies (Johnston 2008). However, this conflict of interest, which posed a risk to the development of the RSPO, was solved pragmatically. Instead of continuing the debate on a common definition of the abstract concept of sustainability and on the exact contribution of the palm oil industry to environmental degradation, it was decided to shift attention to the criteria for sustainable palm oil. The development of the Principles and Criteria took over one year. The ultimate definition of sustainable palm oil production, according to the RSPO, can be found in the principles and criteria. As a consequence, palm oil that is produced according to the Principles and Criteria is seen as sustainable (RSPO 2004d). By now, the definition of sustainability in the form of the Principles and Criteria, while still evolving, is widely accepted within the RSPO.

The Principles and Criteria document consists of seven main principles with accompanying criteria for each. The principles include commitments to transparency, compliance with local laws, best practices, economic viability, and environmental and social responsibility.

3.5.3 Conclusions on justification

The justifications underlying the work of the RSPO differ for each participant and are, for the most part, based on self-interest. However, the RSPO has managed to create a common ground for collaboration by pragmatically accepting differences, by refraining from contested debates on sustainability and by leaving out controversial issues. There is a minimal consensus that current RSPO members are the right actors to act because they each have an interconnected stake in the issue and have structured participation and representation in a justifiable manner. Moral justifications on sustainability that underlie the Principles and Criteria for sustainable palm oil apply mostly to Tier I audiences.

3.6 Creating legitimacy: the perspective of consent and acceptance

The third perspective addresses two questions regarding the RSPO as an authoritative agent in its issue field: (a) what is the scope of the RSPO within the palm oil industry (Tier I audiences); and (b) did the RSPO manage to ensure acceptance of external audiences (Tier II audiences)?

3.6.1 The scope of the RSPO in the palm oil industry

In 2008, RSPO represented around 40% of global palm oil production (Greenpeace 2008c). On the demand side the RSPO represents a much smaller percentage. In November 2008, the first shipment of certified sustainable palm oil arrived in Europe. By mid-2009, RSPO certified plantations were able to supply 1.75 million tons of sustainable palm oil per year, which represents more than one third of Europe's annual uptake of palm oil and about 4% of global palm oil production (WWF 2009). To date, 12 out of 83 palm oil growing members are RSPO certified. Those certified do not necessarily need to have all of their operations certified.

After one year, 200,000 tons of certified sustainable palm oil had been traded as such; thus only 15% of total certified sustainable palm oil produced. By January and February 2011, the market uptake of certified sustainable palm oil, for which a price premium is paid, rose to about 50% of total certified sustainable palm oil supply (RSPO 2011a). At the General Assembly in 2008, a resolution was adopted that obligates all members of the RSPO to submit public plans of their time-bound sourcing targets and certification plans (RSPO 2008). Only a few companies have made their sourcing targets public, making it hard to predict certified sustainable palm oil demand and making it difficult for producers to know how sincere end-users are in their commitment to using sustainable palm oil.

An explanation often mentioned for the low demand for certified sustainable palm oil is the current global economic crisis which became apparent around the same time certified sustainable palm oil came available. The premium was more than buyers were willing to pay at that time and by now the premium for certified sustainable palm oil has declined. The low uptake of certified sustainable palm oil is a disappointment for producers in the RSPO who have always been agitated by the fact that there is a lack of commitment from the demand side and that as producers they bear the full burden of certification.

To date, the only demand for certified sustainable palm oil is from Western countries. Many producers export to countries where there is less or even no demand for certified

sustainable palm oil, such as, for example, Pakistan and China. These producers therefore do not see the need to participate in the certification program. For that reason, the RSPO is trying to engage more stakeholders from different countries. China seems interested and has attended some RSPO meetings but there are no concrete commitments yet.

Although palm oil is used in approximately 50% of products in European supermarkets (WWF, 2009), it is often not visible to consumers due to the character of the product. Palm oil is used as an ingredient in a variety of products, but on the ingredient clarification in the EU it usually only states 'vegetable oils', without specifying which oil is used. Thus far, consumers do not seem to play an important role in the market for certified sustainable palm oil.

3.6.2 Broader societal acceptance

In 2002, WWF hosted a meeting for environmental NGOs interested in the palm oil issue. Several organizations had by then expressed criticisms of the industry and of the Roundtable process (RSPO 2003b). Many NGOs have remained critical towards the RSPO as it developed and continued to doubt the degree to which a private initiative is able to make the palm oil industry more sustainable.

External NGOs have two main points of criticism related to the RSPO, which they express through negative publicity, campaigns and actions against the RSPO and its members. The first one is that the principles and criteria are not strict enough and that the RSPO actually legitimizes large scale plantations. Moreover, being a member of the RSPO does not guarantee compliance with the RSPO principles and criteria. Another criticism by external NGOs is that governments use the RSPO as an excuse not to take action.

There are many examples of NGOs that publicly display their disapproval of the RSPO. One of them is the German NGO 'Rettet den Regenwald', who published the 'International Declaration Against the 'Greenwashing' of Palm Oil by the Roundtable on Sustainable Palm Oil' signed by over 250 organizations worldwide (Rettet den Regenwald 2008). Other actions directed against the RSPO have also been taken by external NGOs. When the first ship of certified sustainable palm oil arrived in Europe, Greenpeace activists tried to board the ship (Greenpeace 2008d). United Plantations was the first company certified by the RSPO. Greenpeace, very critical of the certification process, investigated its non-certified plantations in Central Kalimantan. They accused United Plantations of not meeting the RSPO minimum criteria, rendering the RSPO a disingenuous industry greenwashing attempt that allows companies to "have their RSPO certification of Malaysian plantations

but continue with business as usual in their Indonesian concessions” (Greenpeace 2008a). Sawit Watch, an Indonesian NGO, filed a complaint against the auditing company that granted the RSPO certificate on the basis that the minimum criteria were not met (Nikoloyuk 2009).

The influence of these actions, mainly taken by Greenpeace and Friends of the Earth, is illustrated by the following case. In December 2009, Unilever announced that it was suspending future purchases from palm oil supplier PT SMART, part of the Sinar Mas group (Unilever 2009). This act followed the publications of two reports by Greenpeace, making allegations that the Indonesian company’s plantations were responsible for destruction of high conservation value forests and for expanding onto deep peat lands. After Unilever conducted their own research on the activities of PT SMART, they decided to suspend their future purchases, because PT SMART violated their business partner code. Unilever decided to take action outside of the RSPO framework, while PT SMART is an active member of the RSPO and participates in several working groups. In February 2010, Unilever told dealers not to source palm oil from Indonesian planter Duta Palma, also a RSPO member, based on concerns over rainforest destruction (Koswanage 2010), despite the fact that Unilever is not sourcing palm oil from them. Again this action was taken outside of the RSPO framework. It seems that the benefit of high consensus in the RSPO comes at the price of not being able to resolve conflicts.

The loud accusations of greenwashing demonstrate that the RSPO certification system is not accepted by many parties outside of the process. Nonetheless, there are multiple relationships between external and internal stakeholders. External and internal NGOs share information and discuss issues concerning palm oil together. Internal NGOs are content with the fact that external NGOs check the actions of the RSPO and put the RSPO under pressure by means of campaigns and actions when they see a danger of greenwashing.

3.6.3 Conclusions on consent and acceptance

Compliance with RSPO regulation seems to rely mostly on self-interest. The critical stance of Tier II audiences may indicate that the RSPO has not yet been able to create moral legitimacy. Moreover, there are no signs of cognitive legitimacy; the RSPO is not perceived by any audience as the natural or only way to govern the palm oil industry. Despite the critical stance of Tier II audiences, there are numerous relationships between external and internal actors, which are very influential for the outcomes of debates within the RSPO. Outside pressure seems to lead to more negotiation power for internal NGOs. This last

perspective also shows that there is more controversy regarding the content of RSPO standards and their implementation than regarding its governance structure.

3.6.4 Sum-up

Through the process of creating legitimacy, private governance initiatives, such as the RSPO, aim to change the parameters under which actors in commodity chains operate. Legitimacy is realized in interactive processes, both within the new institution and with other actors that have a stake in the issue field. The RSPO fulfilled an agenda-setting role and changed the discourse on sustainable palm oil. The RSPO is also one of the first private governance initiatives developing a mainstream sustainability standard for an internationally traded agricultural commodity. However, the new practices introduced are not neutral tools to govern the chain. Institutions such as the RSPO manifest themselves as political spheres of action and in their interactions become part of the economic struggle for market power (Ponte 2004, Glasbergen 2007). As we have seen, the conglomeration of actors and their diverging interests forced the RSPO to take a pragmatic approach to sustainable change; pragmatic in the sense that the RSPO stands for stepwise improvements. Even this approach creates many tensions. A first tension is visible between producers in developing countries and food-processors and retailers in industrialized countries. Producers who can easily find markets that are not interested in sustainability standards are not strongly inclined to adapt to the standards that they helped to design. The second tension arises from outside actors, particularly NGOs, who represent a more fundamental discourse on sustainability and are critical about a pragmatic and process-oriented approach. By criticizing the standards and scrutinizing their implementation, these NGOs put the RSPO under constant pressure. This may create tensions between inside and outside NGOs, though in practice we have seen that they sustain each other in the sense that the former keep the latter alert. Because of these tensions, the outcomes in terms of a more sustainable commodity chain are not easy to predict. The RSPO is still a fragile institution, and there is still a possibility that it only creates a niche market for certified palm oil. The opportunity to change the market as a whole will depend, in particular, on the ability of leading food-processors and retailers, sustained by leading financial institutions, to make the RSPO a strong countervailing power in the market.

3.7 Conclusion

This chapter took a multi-dimensional approach to analyze legitimization processes of the RSPO, by looking at three aspects grounded in different theoretical approaches: legality,

moral justifications, and consent and acceptance. The research reveals specific characteristics of the legitimization process and shows the value of a multi-dimensional approach. The three perspectives complement each other and deepen our insights into sources of legitimization of private governance arrangements, partly by revealing tensions and trade-offs in the different ways in which private governance initiatives can create legitimacy.

Our analysis reveals that the three perspectives do not refer to factors that independently contribute to legitimacy. An order of sequence has become visible, in which creating legality must be regarded as the basis of the legitimization process. Interwoven with this process of legalization is the creation of moral justifications. If both are secured this is a necessary, but not a sufficient condition for legitimacy, as creating consent and broader acceptance of a private governance initiative calls for additional activities. This all should be seen as a dynamic process.

Our analysis further highlights several tensions and trade-offs between the three elements of the legitimization process. The inclusion of a large variety of stakeholders and basing decisions on consensus are crucial for the *legality* of the Roundtable. This has generated various compromises in the *moral justifications* underlying the content of sustainable palm oil. These compromises lead to a less strict standard, which in turn leads to the absence of *acceptance* of many NGOs, which reduces legitimacy. Thus, while the legality of the RSPO contributes to its legitimacy, it leads to a lack of acceptance of Tier II audiences, thereby compromising its popular legitimacy. Furthermore, moral justifications for one stakeholder can be a reason for another actor to withhold consent or acceptance.

While the RSPO has been able to develop widely accepted rules of power concerning representation, participation, neutrality and procedural regularity, the implementation of these rules has proven to be difficult at times. The principles of representation and participation are taken seriously in the RSPO and transparency and consensus are key concepts in decision-making processes, but the equal representation of stakeholders is still problematic. So far, the inclusive approach of the RSPO has been unable to resolve all conflicts. While on paper all elements of legality have been established, they seem to fail when there are conflicts between powerful actors in the Roundtable.

Creating moral justifications is of vital importance to the legitimization process and is also needed to appeal to a broader audience. The RSPO is surrounded by a complex of justifications; these justifications differ for different – internal and external – stakeholders.

However, a common ground for collaboration was created by pragmatically accepting these differences, by refraining from an ideological debate on the concept of sustainability, and by leaving out controversial issues. However, in this case we see a set of justifications which does not allow initial objectives of all stakeholders to be met in a significant way.

For a large part internal legitimacy is realized by creating legality and moral justifications, but the authority of the RSPO has not been entirely established by these two elements of the legitimization process. Creating acceptance of the RSPO is vital for establishing external legitimacy as well as for reinforcing internal legitimacy.

The RSPO has not been able to ensure consent and acceptance of many NGOs working on palm oil issues. Nonetheless, we have argued that these external NGOs have a tremendous influence on the RSPO. The scope of the RSPO within the palm oil market is not, at least not yet, very wide and many parts of the world continue to show no interest in the RSPO.

Being a member of the RSPO does not automatically lead to a commitment to sustainable palm oil, because members have few obligations and these obligations are hardly enforced. This deficit in the legality of the RSPO, leads to a (further) decline in external consent and acceptance of the RSPO. This shows that the different aspects of a legitimization process cannot only reinforce but also weaken each other.

As a recommendation for further research, we suggest a 'grassroots' analysis on the legitimacy of Roundtables or NSMD governance initiatives by looking at perceptions of legitimacy at the local level, where sustainability standards need to be implemented. By studying legitimacy in such a bottom-up manner, the understanding of legitimization processes of NSMD governance can be broadened even further.

Positioning Chapter 4

‘On the deliberative capacity of private multi-stakeholder governance: The Roundtables on responsible soy and sustainable palm oil’

Chapter 4 aims to answer the following research question:

What is the democratic potential of private governance arrangements like Roundtables?

After inductively (Chapter 2) and deductively (Chapter 3) exploring processes of legitimization in Roundtables, Chapter 4 explores the related issue of democracy. Roundtables try to enable and enhance their legitimization processes by presenting themselves as arrangements that are being governed on the bases of democratic principles. However, the democratic quality of private multi-stakeholder governance is an important subject of academic and political debate. On the one hand, private multi-stakeholder arrangements are seen as a way of democratizing international environmental governance. On the other hand, the democratic potential of these arrangements has been heavily criticized and interpreted as a privatization of what should be public. To nuance this debate, the following chapter assesses the democratic potential of Roundtables. By making use of the concept of deliberative capacity, the chapter provides an in-depth analysis of the Roundtable on Responsible Soy. To verify whether the results of this first case study have a wider application, a quick scan of the deliberative capacity of the Roundtable on Sustainable Palm Oil is made. This analysis shows to what extent the communicative processes in these Roundtables are inclusive, consequential and authentic. The chapter concludes that the Roundtable model tends to fall short on two criteria of deliberative democracy: inclusiveness (of actors and discourses) and consequentiality.

An earlier version of this chapter was awarded the Best Paper Award in Social Partnership at the 3rd International Symposium on Cross Sector Social Interactions, 24-25 May 2012 in Rotterdam organized by The Partnership Resource Centre, RSM, Erasmus University and Hull Business School, University of Hull.

This chapter was written in collaboration with Pieter Leroy and Pieter Glasbergen, and has been published in *Ecological Economics*. The full reference is:

Schouten, G., Leroy, P., & Glasbergen, P. (2012). On the deliberative capacity of private multi-stakeholder governance: The roundtables on responsible soy and sustainable palm oil. *Ecological Economics*, 83, 42-50.

4 On the deliberative capacity of private multi-stakeholder governance: the Roundtables on responsible soy and sustainable palm oil

4.1 Introduction

The past decades have witnessed the rise of private governance initiatives addressing sustainability problems that link a variety of stakeholders around the world. This ‘global megatrend’, which started around the 1990s, has accelerated over the past 10 years and is very likely to continue in the future (Falkner 2011, p. 4). A specific form of global private governance is the ‘Roundtable’. Roundtables are private arrangements with the aim of improving the sustainability of a global commodity chain. They are multi-stakeholder platforms where private parties - businesses and non-governmental organizations (NGOs) - have decision-making power (Schouten & Glasbergen 2011). Instead of creating a niche market, as is often the case with private global governance initiatives, Roundtables develop standards that are meant to make an entire commodity chain more sustainable.

Private multi-stakeholder arrangements have been discussed from different vantage points, among them their democratic credentials (Glasbergen 2011). This debate is part of a larger academic and political debate on legitimacy and global governance, which has also been part of ecological economics (see for example the special section in *EE* (70, 2011) on accountability and legitimacy in earth system governance) (Biermann & Gupta 2011). One interpretation regards these arrangements as part of the ‘deliberative turn’ in the governance of environmental and sustainability issues. This concept refers to the arrangements as “more or less explicit attempts to democratize politics and simultaneously foster more effective policies” (Bäckstrand *et al.* 2010, p. 4). These multi-stakeholder arrangements are considered by some authors as a way to address the democratic deficits of international governance institutions and interpreted as forums intended to promote learning, dialog, and best practices (Bexell & Mörth 2010, p. 13).

On the other hand, the democratic potential of multi-stakeholder arrangements has been criticized because some groups have privileged access, collaborations may be focused on selective topics and discourses (Haufler 2002), asymmetries of power might result in colonization of the arrangements by market actors (Saurin 2001, Richter 2002, Newell

2005) and they might diffuse the radical potential of green critique (Falkner 2003) (for a more detailed overview of these arguments see: Bexell and Mörth, 2010; Lövbrand and Khan, 2010). These two different and sometimes even opposing positions in the debate reveal difficulties in analyzing and assessing democracy in multi-stakeholder governance arrangements. This Chapter aims to contribute to nuancing the debate on democratic challenges that are presented by private governance arrangements.

Classical approaches to democracy as applied to nation-states do not fit these new private governance arrangements. Global private governance arrangements are self-mandated and, unlike democratic governments, are not formally authorized by their constituencies to govern a certain issue field (Dingwerth 2007). Dingwerth (ibid.) recognizes three different approaches to democracy of governance beyond the state: constitutional, pluralist and deliberative approaches. The idea of a constitutional democracy is that “all political authority is understood to derive from the sovereign people who, conceived as equals, exercise their constituent power to create and define the nature and limits of ordinary political authority” (Freeman 1990). The idea of pluralism requires “the dispersion of power among a variety of collective actors and the balancing of diverse social interests” (Dingwerth 2007). While recognizing the pluralist nature of transnational governance, deliberative democracy approaches put emphasis on communication and reflection in decision-making (Dryzek 2010). “Deliberation is based on arguing and persuasion as non-hierarchical means of steering to achieve a reasoned consensus rather than a bargaining compromise” (Risse 2004). The main assumption is that “through open and reasoned argument, free from manipulation and the exercise of power, better and more legitimate decisions will arise” (Bäckstrand *et al.* 2010, p. 5).

While all three approaches provide insights into democratic governance beyond the state, most authors seem to agree that deliberative democracy is most suitable to transnational governance (e.g. Dingwerth 2007, Kronsell & Bäckstrand 2010, Dryzek & Stevenson 2011). In the first two approaches, democratic legitimacy still relies for a large part on the state. Because private governance arrangements explicitly derive their authority from private actors and exclude state actors from their decision-making processes, constitutional and pluralist approaches to democracy do not fit the empirical reality of these kinds of arrangements. In contrast, deliberative approaches to democracy are not so dependent on the state, but rather on the discursive quality of collective decision-making (Dingwerth 2007). Meadowcroft (2007) argues therefore that the potential of private governance arrangements to advance democracy does not lie in representative or aggregative

approaches to democracy, but rather in increasing deliberative democratic interactions. These kinds of arrangements are said to provide arenas for deliberation, since the relations between actors in these networks would rely on communication, exchange of information, and on trustful and cooperative attitudes (Kronsell & Bäckstrand 2010). In addition, new modes of environmental governance rest upon the underlying assumption that broad participation in collective decision-making will result in more effective policy outcomes (Bäckstrand *et al.* 2010). This also holds true for Roundtables, since they are presented as arrangements based on a deliberative democratic rationality. In general, Roundtables make two claims which emphasize their deliberative rationale: that through their communicative processes which include a wide variety of stakeholders they are able to create a common good, and, that these processes are open, inclusive and consensus-based.

To analyze and assess deliberative democracy, the concept of deliberative capacity arises. This concept builds on the rationale of deliberative democracy and refers to questions related to the openness of the communicative processes, the content of the discourses, and the consequences in terms of the conceptualization of the common good. This Chapter claims that this concept can help us to progress in the debate on the democratic potentials of transnational governance and of Roundtables in particular. Deliberative capacity is generally discussed in relation to states and other forms of 'public governance'. However, this Chapter builds upon some early attempts to apply the concept to a broader range of governance arrangements by Dryzek (2009, Dryzek & Stevenson 2011) and Dingwerth (2007).

In the next section our analytical framework is presented along with a detailed operationalization of the concept of deliberative capacity and our research strategy. To analyze democracy as the deliberative capacity of Roundtables, this Chapter uses the Roundtable on Responsible Soy (RTRS) as an in-depth case study. To verify whether the results of this first case study have a wider application, a quick scan of the deliberative capacity of a second Roundtable, the Roundtable on Sustainable Palm Oil (RSPO), is made. This Chapter concludes on the use of the concept of deliberative capacity as an analytical tool to assess to what extent global private governance arrangements can be seen as democratic.

4.2 Analyzing deliberative capacity: research strategy

4.2.1 Elements of deliberative capacity

Dryzek (2009) defines deliberative capacity as the extent to which political systems possess structures to host deliberation that is inclusive, authentic, and consequential. This categorization is in line with others, for example the input, process and output/outcome categorization of participative processes by Burgess and Clark (2009). Without inclusiveness there can be deliberation, but it will not be democratic. Authenticity requires that deliberation non-coercively induces reflection, connects claims to more general principles, and exhibits reciprocity (Dryzek 2000, Dryzek 2009). Consequentiality means that deliberations have an impact on collective decisions. This impact may be direct or indirect; deliberation does not necessarily need to involve actual decision-making. Since a univocal operationalization of Dryzek's conception of deliberative capacity to date is lacking, the following paragraphs present an operationalization of the three elements of the concept.

4.2.2 Inclusiveness

The first element of deliberative capacity – *inclusiveness* – refers to the variety of interests and discourses that are present in the governance arrangement (Dryzek 2009). Inclusiveness in terms of interests refers to the degree to which stakeholders participate. Participation has two distinct aspects: the scope and the quality of participation (Dingwerth 2007). To determine the scope of participation, a stakeholder analysis was conducted. Stakeholder is defined in this chapter as “any group of people, organized or unorganized, who share a common interest or stake in a particular issue or system; they can be at any level or position in society, from global, national and regional concerns down to the level of household or intra-household, and be groups of any size or aggregation” (Grimble & Wellard 1997). Through the identification of stakeholder groups, and by analyzing which groups are part of a Roundtable and its deliberative processes (and which groups remain outside of these processes), we can determine the scope of participation in the Roundtable. Scope is conceptualized in terms of the range of stakeholder types that are included as members in a Roundtable, as well as the geographical spread of these participating actors. With stakeholder type this chapter refers to the type of organizations actors represent within the Roundtable (type of commodity chain actor, development or social NGOs, etc.). To sketch the geographical spread of stakeholders, the country of origin of the organizations is looked at. This analysis of the scope of participation reveals which interests are dominantly represented in a Roundtable and which interests more marginally.

To analyze the quality of participation we analyzed how the participating actors are involved in processes of decision-making. According to Dingwerth (2007, p. 29), in the deliberative model the quality of participation is linked to the equality of opportunities for stakeholders to participate in decision-making in an adequate way. That is why we analyze what kind of opportunities to participate in a Roundtable stakeholders have and how different (groups of) stakeholders actually use these opportunities to participate in decision-making processes. Furthermore, factors that hinder stakeholders to participate are identified.

To analyze inclusiveness in terms of discourses, a discourse analysis on the issue of agricultural expansion and sustainable development was conducted. This discourse analysis is not confined to the official discussions within the Roundtable, but also scrutinizes related discourses that take place outside of the Roundtable. Discourses structure the contributions of actors to a discussion, and a discourse analysis illuminates a particular discursive structure in a discussion (Hajer 2006). Discourse is defined here as an “ensemble of ideas, concepts, and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of practices” (Hajer 2006, p. 67). The discourse analysis centers mainly on the question: What are the main framings of sustainable development, specifically in relation to agricultural expansion of a specific product? By analyzing official documents and minutes from Roundtables, their member organizations and external organizations referring to the Roundtables, we identified different problem framings and accompanying solutions in the debates regarding the expansion of an agricultural crop. From this data we distilled broader categories of these framings that are similar in their views of sustainability and the way the relationship is framed between humans, economy and society concerning this specific crop. Furthermore, we linked these discourses to more general discourses on sustainable development. A common categorization of discourses on sustainable development is to distinguish between more radical and more reformist formulations of sustainable development (Robinson 2004). Actors in the radical approach to sustainable development argue for fundamental value and behavioral change, while those in the reformist approach focus on the development of technology and institutional reform (ibid.).

4.2.3 Authenticity

The *authenticity* of the communicative processes in Roundtables was assessed by scrutinizing to what extent these processes actually show characteristics of deliberation. Steenbergen *et al.* (2003) (see also Steiner *et al.* 2004) have developed an empirical measure

of the quality or authenticity of deliberation, in the form of a discourse quality index (DQI). This DQI method involves analyzing the exact transcripts of a debate and coding every intervention on various criteria, for which they use seven indicators. These data are not available for our case studies and therefore this specific methodology cannot be used. However, the criteria of the DQI can be used to analyze the reconstruction of debates, instead of exact transcripts. Depending on the available data, either a reconstruction of these debates was made and analyzed by means of minutes of meetings, personal observations during debates and interviews with participants of the deliberations, or interviews were conducted on the perceived quality of deliberations by participants. DQI's seven indicators of authentic deliberation focus on four general issues: participation, justifications, respect, and constructive politics. Since participation has already been discussed under inclusiveness (section 2.2 above), we will only discuss justifications, respect and constructive politics.

The first indicator refers to justification of demands in the deliberative process (Steenbergen *et al.* 2003) and regards the extent to which actors in the debate justify their positions and how sophisticated these justifications are. According to Steenbergen *et al.* (2003, p. 28) there are four levels of justification. At the first level, no reason is given for a statement or demand. The second level is that of inferior justification. Here, a reason is given for why a certain demand should or should not be fulfilled, but no linkage is made between the demand and the justification. The third level is that of qualified justification, where a linkage is made between the demand and the reason for that demand. The fourth level is that of sophisticated justifications, where more than one qualified justification is given for a demand. Not only is the level of justification important, but also the content of these justifications. Here we assess whether “appeals are made in terms of narrow group interests, in terms of the common good, or in terms of both” (Steenbergen *et al.*, 2003, p. 28). Steenbergen *et al.* (2003) make a distinction between two important conceptualizations of the common good: the utilitarian view, which regards the common good as the greatest good for the greatest number (Mill 2004) and the difference principle, which conceives the common good as helping the least advantaged in society (Rawls 1972).

The issue of respect entails three dimensions (Steenbergen *et al.* 2003). The first dimension regards the degree to which actors in the deliberative process are positive or negative towards other groups. The second dimension entails respect towards demands and assesses the degree to which actors in the deliberative process are positive or negative towards the

demands of other actors. The third dimension refers to respect towards counterarguments and looks at the degree to which actors have a positive attitude toward counterarguments.

The last indicator of the authenticity of the deliberative process, constructive politics, assesses the extent to which actors retain their original positions or come up with alternative proposals in the course of the deliberative process, to analyze if participants approach the deliberations with the aim of reaching consensus (Dingwerth 2007). This last factor has an explicit time dimension, since we have to assess the extent of change in the opinions of different stakeholders to move towards consensus.

To assess the authenticity of the deliberations we need to focus on a specific debate that takes place within Roundtables. One of the main reasons for the establishment of the Roundtables is to decrease negative sustainability impacts related to the expansion of a specific agricultural crop. Most Roundtables therefore develop principles and criteria that specifically prescribe under what conditions crops can be grown on land that previously had a different function. This is to prevent expansion taking place into, for example, biodiversity hotspots or virgin rainforest. The debates about this expansion go to the heart of the concept of sustainable development. Therefore, this chapter focuses on the analysis of the deliberative capacity of Roundtables in the development of principles and criteria that cover the issue of the expansion of agricultural production.

4.2.4 Consequentiality

The third element of deliberative capacity – *consequentiality* - can be interpreted in two ways: as output consequentiality and as outcome consequentiality. In the first interpretation consequentiality is understood as the degree to which the deliberative processes determine the output of the Roundtable, i.e. the standard to which the principles and criteria for sustainable production have been laid down. This *output consequentiality* of deliberation is addressed by analyzing two criteria: *discourse structuration* and *discourse institutionalization* (Hajer 2006). *Discourse structuration* takes place when a specific discourse is used by many actors in a specific social setting (in this case the Roundtable) to conceptualize the world. *Discourse institutionalization* occurs when a discourse solidifies in particular institutional and organizational practices. In this case, that is when it is translated into the Principles and Criteria of a Roundtable. If both criteria are met, a discourse can be labeled dominant. This analysis shows whether specific views in the communicative processes are marginalized, and which views become dominant in a Roundtable.

The second interpretation, *outcome consequentiality*, refers to the effect a Roundtable has on the market it aims to regulate. Following Visseren-Hamakers *et al.* (2010), outcome consequentiality is understood as the number of actors reached and/or involved, the number of actors implementing new policy (in this case the percentage of the market that is certified under the standard and the quantity of this certified produce that is taken up by the rest of the commodity chain), and the integration of the standard into existing policy.

4.2.5 Case selection

The Roundtable on Sustainable Palm Oil (RSPO), initiated in 2002, is generally regarded as the first of the Roundtables and also the most mature one. The Roundtable on Responsible Soy (RTRS), initiated in 2004, was based on the RSPO-model and therefore has a very similar architecture. Both Roundtables have made important steps and there is a current supply of certified products, which means that all aspects of deliberative capacity can be analyzed. Furthermore, the available data for both Roundtables are exceptionally rich and thus suitable for in-depth case study research.

Palm oil and soy are both produced in huge quantities and are of major importance in global agricultural markets since they are consumed globally. Moreover, both products are used as food, animal feed and biofuel and face severe sustainability challenges. The main production areas of oil palm are in Malaysia and Indonesia, where the expansion of production forms a huge threat to biodiversity hotspots and social rights of local people. The expansion of soy production contributes to very similar problems in Latin America and Asia. These challenges highlight the need for more sustainable production and of analyzing the governance solutions that are currently proposed.

This chapter analyzes the RTRS in an in-depth manner to be able to understand the mechanisms related to the deliberative capacity of this initiative. The RSPO case is used to verify whether the results for the RTRS are applicable to a broader range of Roundtables and is therefore presented in a shorter and less in-depth manner.

4.2.6 Data collection

This chapter builds on our previous research on the RTRS and RSPO (see Schouten & Glasbergen 2011, Schouten & Glasbergen 2012). The data analyzed in this chapter have been collected during the 2008-2011 period. For the RTRS the analyzed data include the minutes of the RTRS Organizing Committee and Executive Board in the 2004-2010 period, newspaper articles and publications of organizations working on soy-related issues. This desk research was complemented by personal observations during two RTRS Executive

Board meetings, the fourth Roundtable Conference and the third General Assembly in Campinas, all during May 2009, when most of the debates regarding the expansion of soy cultivation took place. In our control case (the RSPO), the analyzed data include the minutes of the RSPO Organizing Committee, Executive Board and several working groups (2002-2010), newspaper articles and several types of publications (including newsletters) of organizations working on issues related to the sustainable production of palm oil. These data are complemented by five interviews with participants of the new plantings working group, specifically for the analysis of the deliberative authenticity of the communicative processes, as well as observations during the ninth Roundtable Conference on Sustainable Palm Oil and the eighth General Assembly of the RSPO in November 2011 in Kota Kinabalu, Malaysia.

4.3 The Roundtable on responsible soy

4.3.1 Inclusiveness and the RTRS

Inclusion of interests

Although the organization of the RTRS is based on norms of inclusiveness and participation and on paper is open to all stakeholders, this does not guarantee a representative sample of stakeholders actually participating in the decision-making processes of the arrangement. The first step to become involved in the RTRS is to apply for membership of the organization in one of the following member-categories: producers; industry, finance and trade; or civil society. Our stakeholder analysis identified several broad stakeholder groups that have significant interests in the production of sustainable soy, which fit the member categories as defined by the RTRS, except for governments, governmental agencies and scientific institutions. These last groups of stakeholders are excluded from decision-making processes of the Roundtable, but can apply as observing members.

The scope of participation in terms of membership is as follows: the RTRS has 150 members of which 29 are producers, 16 are from civil society, 73 are in the industry, trade and finance constituency and 32 are observing members without voting power (October, 2011). Looking at the balance of interest within the RTRS we see that of all members with voting power, the industry, trade and finance constituency has the largest share of members (62 percent), followed by the producers (25 percent) and civil society (13 percent). To avoid domination of one specific stakeholder group in the RTRS, each

constituency group has a voting power of one third of the total votes in the General Assembly.

The geographical spread of membership is rather skewed compared to the global production and consumption of soy. Soy production mainly takes place in the Americas. While the United States of America (USA) is the biggest producer of soy (38 percent of world production in 2003), followed by Brazil (26 percent) and Argentina (18 percent), no more than 4.7 percent of all members is from the USA. Latin America is rather well represented in the RTRS with a share of 37.4 percent of total membership. Producing countries from Asia include China and India (8 percent and 2 percent respectively) (Carrere 2006). In 2008, China's soy imports accounted for 53 percent of the world total, while the EU-27 imported 17 percent of global soybean imports (USDA 2010). Despite China's major role on the global soy market they make up only 2 percent of membership in the RTRS, while Europe has a share of 44 percent of the members. Currently, there are no members from either Africa or Oceania.

While the RTRS is officially open to all stakeholders, many stakeholders in this issue area did not become involved. The inclusion of smallholders, local groups and global development NGOs has proven to be very challenging throughout the Roundtable process (García-López & Arizpe 2010). Furthermore, consumers are not represented. The largest share of members in the civil society category consists of NGOs that focus on environmental issues. Neither the Organizing Committee nor the Executive Board succeeded in including large social NGOs and smallholders or organizations representing smallholders through the years. Fetraf-Sul, the only organization representing small farmers, stepped down from the Organizing Committee in the summer of 2005, because it didn't feel it could influence the agenda. The development NGO Cordaid showed solidarity with Fetraf-Sul and left the OC as well (A Seed Europe 2005). While the RTRS managed to work with smallholders in India and has managed to include five Latin American producers' organizations as members, the Roundtable still feels it needs to include many more small producers from Latin America (RTRS 2011a).

Overall, the RTRS is mainly European driven, and English is the language for Executive Board meetings. Although during official RTRS conferences and General Assemblies everything is translated into three languages (English, Spanish and Portuguese), main documents and meetings are in English. This might be an obstacle for the integration of certain groups of stakeholders.

While the RTRS only partly succeeded in attracting a representative group of stakeholders as members, the members of the RTRS have several options to actively participate in the deliberative processes of the Roundtable. All full members together make up the *General Assembly*, which is the highest decision-making body of the RTRS. The General Assembly elects the Executive Board and hands over most decision-making and operational tasks to that body. In the Executive Board each of the three constituencies has the right to five seats. The Executive Board appoints the head of the secretariat. The secretariat takes care of the operational business of the RTRS, including the coordination of working groups, and is located in Argentina (RTRS 2011b). Working groups are established to reach consensus on specific, sometimes technical, issues in the Roundtable.

These working groups are important mechanisms to participate in the RTRS. Examples of such working groups include: several national technical working groups, the traceability and market claim working group, the biofuels working group, the supply chain certification protocol group and the criteria development group. This last working group was formed to further develop the Principles and Criteria for responsible soy. This group consisted of nine representatives of producers (from Argentina, Brazil, India and Paraguay), nine representatives of Industry, Finance and Trade (from Argentina, Brazil, the Netherlands, USA, Belgium and Sweden), and eight representatives of civil society (from Argentina, Brazil, the Netherlands and China). During the process there were three public consultation periods. The comments that came out of these public consultation periods were used to revise the Principles and Criteria. It was not necessary for the Development Group to use the voting system, because all decisions made were based on consensus. On the criteria concerning the expansion of soy production, no consensus was reached; the agreement was on a general framework only (Robinson 2009). The debate on the expansion of soy cultivation continued in the Executive Board and during the third General Assembly. This debate is analyzed in terms of its authenticity in section 3.2 below.

In sum, although the RTRS managed to include a diverse range of actors in the Roundtable process, this range of actors does not add up to a representative sample of stakes in responsible soy production. RTRS members have several opportunities to participate in decision-making processes and possess final power and control over the organization's course of action through the General Assembly. The process for developing the main output of the RTRS, the Principles and Criteria for responsible soy production, also included several entry points for participation.

Inclusion of discourses

The discourse analysis of the communicative processes in the RTRS identified three main discourses on sustainable development and the expansion of soy cultivation. Two of these are included in the communicative processes of the Roundtable, while the third takes place outside the Roundtable process.

The first identified discourse centers on the view that economic growth can go hand in hand with social and environmental sustainability. In this view, large-scale soy production is possible in a socially and environmentally responsible way. The existence of unsustainable practices in the soy industry is recognized, and raising the bar for mainstream soy production is seen as the solution. Raising the bar will be successful when it is organized through a multi-stakeholder process:

“ We believe the way to make soy cultivation sustainable in the long term is for us to work closely with others – industry leaders, NGOs and other businesses – on developing internationally recognised standards, compliance programmes and certification systems. These will ultimately help protect biodiversity and lead to a more responsible approach to soy cultivation”(Unilever 2011).

This first discourse is used by many actors – NGOs and businesses – including initiators of the RTRS such as WWF, Unilever and Solidaridad.

In this discourse, the solution for sustainability problems is sought within the existing soy value chain. Every technique in the production process can be certified and labeled responsible, including the production of genetically modified soy. Solutions to sustainability issues in the soy industry are said to be found in changes within the current system, without making changes at a system level. In this discourse a sustainable soy industry is possible under the condition of economic growth.

In this discourse, the main concerns related to the production of soy, especially at the beginning of the Roundtable process, are of an environmental nature, specifically on the conversion of high conservation value areas in South America. In a newsletter, the World Wide Fund for Nature (WWF) stated that they initiated the Roundtable to:

“ (...) halt the conversion of forests and savannahs into soy fields (...) soy is a major source of income for many South American economies, but extensive cultivation also creates high ecological and social costs in the major production countries of Brazil, Argentina, Bolivia, and Paraguay. (...)”(WWF 2005).

Actors within this discourse do aim for significant contributions to sustainability in the soy industry. For example, representatives of environmental and social NGOs in the Executive Board wrote a letter addressing the whole board when no consensus could be reached about criteria on the expansion of soy cultivation:

“(...) We are writing to express our deep concern over the failure of the proposed RTRS Principles and Criteria (P&C) to address potential social and environmental impacts from the conversion of natural habitats to soy production areas (...) In our view, this omission seriously erodes the credibility of the RTRS P&C as a standard for responsible soy production, such that our organizations could not, with good conscience, support their ratification at the coming General Assembly. (...)”

Representatives of European and South American companies also signed this letter.⁴

This first discourse can be connected to reformist ideas about sustainable development, where solutions to problems are sought within the existing economic system without radically changing it. Furthermore, this discourse also resembles the ideas of so-called ‘ecological modernization’ (Spaargaren & Mol 1992, see for example Mol & Sonnenfeld 2000).

The second identified discourse within the RTRS focuses mainly on economic benefits in relation to the sustainable production of soy. This discourse, like the first one, takes a reformist approach to sustainable development. The actors within this discourse, primarily a group of soy producers from Brazil, are mainly concerned with economic and financial issues related to the sustainability of the soy industry. These producers feel that they have to bear the main burden of soy certification and therefore they need to be compensated. In the debate on the expansion of soy cultivation, we can see this discourse manifest in a letter from APROSOJA (Mato Grosso’s State Association of Soybean Producers) and ABIOVE (the Brazilian Oilseed Processors Association) to the Executive Board:

“The impasse regarding environmental conservation is not due to a lack of awareness of its importance; rather, it is based on a sense of economic financial feasibility. (...) The solution must recognize the producers’ interests and maintain the competitive balance among the various producing countries. Otherwise, the

⁴ EB Member – Unilever, Netherlands; RTRS EB Member – Coop, Switzerland; RTRS EB Member – Fundacion Moises Bertoni, Paraguay; RTRS EB Vice President - DAP, Paraguay; RTRS Member – FVSA, Argentina; RTRS DG Member – ICV, Brazil; RTRS DG Member – Fundapaz, Argentina

distortions will provoke an impasse in other areas, thus failing to promote what we all seek, socio-economic development that respects the environment.”

This second discourse focuses on the economic dimension of sustainable development and seeks solutions to sustainability problems that are profitable to market actors and that ensure economic development.

The *third discourse* centers on the view that large-scale soy production and sustainable development can never go together. This discourse is used by civil society organizations that disqualify the RTRS process and typically classify the Roundtable as greenwash. Within this discourse, large-scale monocultures are rejected and multinationals and large agri-businesses are distrusted. To oppose the first Roundtable conference, stakeholders in this discourse organized a counter conference, which produced the following statement, signed by Via Campesina Brazil, Paraguay and Argentina, GRR Argentina, Coordinadora Antitransgenicos del Uruguay and others:

“We resolve:

-To struggle and mobilise, jointly with other movements and organisations, against the present model of development, agro exports and the proliferation of transgenic crops, which tragically affect the peoples of South America, which attack the environment and peasant societies through monocultures;

-To denounce the false concept of sustainable soya mono crops, officially promoted at the First Round Table Conference on Sustainable Soy, held at Foz do Iguazú, in the interests of the North and of the agribusinesses, with the scandalous support of some large national and international NGOs;

-To assert that sustainability and monoculture are fundamentally irreconcilable, as are the interests of peasant societies and agribusiness; (...)”(GRR 2005).

These and other organizations continued to protest against the RTRS and in 2009, 80 organizations signed a letter calling for the internal NGOs to abandon the RTRS (Ban GM-food, 2009). Within this discourse, solutions for sustainability issues in the soy sector are not sought *within* the current system. The system itself is seen as unsustainable:

“To encourage and disseminate the agro-ecological experience of peasant societies, not merely as alternative modes of cultivation, production and consumption, but as a radical, alternative vision of life and the world, transforming the relationship between nature and human beings”(GRR 2005).

In 2008, Greenpeace, Friends of the Earth and Stichting Natuur en Milieu (Society for Nature and Environment) published a joint statement on the “GM soy debate” project in which they write:

“(..)The root causes of the environmental and social problems in Latin America need to be addressed. In Europe, over-consumption of meat and livestock products, unfair trade, factory farming, agricultural policy, and the lack of domestic vegetable protein production are of particular relevance (...)”

“(...) We feel that the project is starting from an assumption of the sustainability of GM soy (...) the initial question should be ‘CAN GM soy be produced sustainably?’ (...)” (Friends of the Earth *et al.* 2008).

This third discourse can be connected to more radical approaches to sustainable development.

This third discourse is not included in the Roundtable process. In the beginning of the Roundtable, members of the Organizing Committee agreed to not discriminate on technology and production methods, hereby including genetically modified soy and large-scale monoculture plantations. The Common Basis for the RTRS, formulated by the Organizing Committee as early as February 2006, states that:

“Genetically modified soy is currently being cultivated in major growing areas such as Argentina, many parts of Brazil, Paraguay and the USA. Opinions on the benefits and risks of biotechnology and the GM trend vary greatly. Individual Organizing Committee members have different standpoints on genetically modified soy. The Round Table process will not promote the production, processing or trading of either genetically modified or non-genetically modified soy” (RTRS 2006).

Despite many efforts of the Organizing Committee to get proponents of this third discourse on board, this discourse is excluded from the beginning of the RTRS process onwards through the inclusion of GM-soy and large-scale soy plantations in the standard.

4.3.2 Authenticity

To assess the three criteria of the authenticity of deliberations, we analyzed two of the main discussions on the expansion of soy production that took place during the Executive Board meeting on May 25, 2009 and the General Assembly on May 26, both in Campinas, Brazil.

Justifications

Since most participants provided more than one logically structured justification for their demands and tried to make a compelling case for their positions, the level of justification in the debate can be scored overall as ‘sophisticated’. This can be illustrated by the

contributions of the representative of the Brazilian Oilseed Processors Association, who gave a detailed and elaborated argumentation of why producers should receive payments for environmental services by explaining the relevant Brazilian laws and policies and providing analogies with other industries. Furthermore, before the meeting all stakeholders provided written documents that explained their point of view in the debate and their propositions for possible solutions. These documents were frequently referred to during the debate.

The appeals varied in terms of their content; the demands raised by representatives of soy producers in this debate were largely justified in terms of their narrow group interest, while appeals made by other groups were on many occasions referring to the credibility and legitimacy of the RTRS as a whole. A representative of producer interests said: “we are defending the right of the producers in Mato Grosso in this case; we can deforest according to the law”. Another Executive Board member replied: “we have to think beyond Brazil, the RTRS is under strong attack and it is a fragile institute” and “in our view, this omission [the lack of criteria on the conversion of natural habitats, red.] seriously erodes the credibility of the RTRS Principles and Criteria”. The latter statement shows a utilitarian view of the common good in the RTRS. Our analysis of this particular debate did not show justifications based on the difference principle, where the common good is conceived as helping the least advantaged in society. The content of justification was rather based on self-interest or on utilitarian views.

Respect

Regarding the discussion on the expansion of soy cultivation, participants generally showed respect towards other groups within the debate. The analysis shows no instances of disrespect, such as shouting or name-calling. Actors listened to each other’s demands and allowed each other to voice counterarguments and subsequently reacted on these. Even if participants did not agree on basic demands, they emphasized the parts where an overlap in views existed. One participant reacted to demands of producers he disagreed with: “I agree completely to payment for environmental services, producers should be compensated, but we have to communicate that expansion should occur on open land”. Even when it became clear that the participants could not reach agreement, the debate remained respectful. A representative voiced his dissatisfaction with the outcome of the debate, without blaming other participants: “I am not satisfied and I feel very uncomfortable with this outcome”.

Constructive politics

During the development of the Principles and Criteria document, the participants of the Principles and Criteria and Development Group were able to reach consensus on every aspect of the document, except the expansion of soy cultivation. In case of the discussion on the expansion of soy cultivation in the Executive Board, participants were only willing to make minor concessions, but some alternative proposals were raised. For example, the representatives of Brazilian soy producers and processors took the proposed RTRS Statement on Conservation and Compensation document, and showed on screen which parts they would like to see reformulated. Another participant, for example, said: “I think we should look at WWF’s proposal, because it is much clearer than mine”.

During the debate the demands of different groups of stakeholders converged slightly, but at the end of the debate no consensus was reached. The outcome of the discussion even led to an important stakeholder leaving the Roundtable. When, during the third General Assembly, it became clear that it could not get its demands into the standard, APROSOJA declared it would resign from the Roundtable and the Executive Board, since it was not able to abandon its private interests for the common good. The remaining members of the RTRS then did reach a decision on this issue.

4.3.3 Consequentiality*Output consequentiality*

The dominant discourse in the Roundtable takes a reformist view on sustainable development (the first identified discourse). This discourse is both structuralized and institutionalized. It is used by most stakeholders in the Roundtable and is most prominently represented in the standard for responsible soy. We see that the deliberative process in the Roundtable is consequential, in the sense that the standard was really developed through organized deliberative processes. The deliberations in the Principles and Criteria Development Group, the Executive Board and the General Assembly eventually produced the standard for responsible soy that combines environmental and social responsibility within the limits of economic feasibility. Although the standard did not live up to the expectations of all participants on the expansion of soy, there is consensus on the majority of the Principles and Criteria within the RTRS.

At the same time we observe a lack of transmission from deliberative processes taking place outside the Roundtable to deliberative processes inside. This lack of transmission (or inclusion of discourses) becomes visible in the standard for responsible soy. Output

consequentiality for deliberative processes within the Roundtable is high, but when we take deliberative processes outside the Roundtable into account, output consequentiality becomes much lower.

Outcome consequentiality

The number of actors involved in the RTRS as members is reasonably low in terms of the share of the market they represent, with for example only 29 members in the soy producers' category. The number of actors actually implementing the standard for responsible soy is even lower, because the trade in certified soy is in its starting phase. The first certified soy became available in June 2011 and, while the Certificate Trading Platform has facilitated several transactions between certified producers and market stakeholders, some additional time is needed to gain a better view of the impact of the RTRS on the soy industry.

There are positive prospects for the impact of the RTRS to increase, since several actors announced their future commitment to the RTRS. The Dutch industry has publicly declared that in 2015 all soy used in the Netherlands (1.800.000 tons) will be RTRS certified (TFDS 2011). Furthermore, the Belgian Feed Association (BEMEFA) has committed to sourcing all their soy RTRS certified in 2015 (around 1 million tons) and the UK feed industry also announced it would commit to RTRS-certified soy in the near future (MVO 2011). The largest importer of soy in the world, China, is also starting to show interest for the RTRS. While no real commitments have been made yet, it is expected that the Roundtable conference in 2013 will be in China and organized by Chinese stakeholders.

4.4 The Roundtable on sustainable palm oil

To see whether the results for the RTRS have a wider application beyond this case, this chapter presents a quick scan of the deliberative capacity a second Roundtable: the Roundtable on Sustainable Palm Oil (RSPO). The architecture of this Roundtable is very similar to that of the RTRS and it is partly driven by the same actors, including WWF, Unilever and Solidaridad. The RSPO is generally considered the most mature Roundtable and was initiated by WWF-Switzerland in reaction to severe sustainability issues in the palm oil sector. The first meeting of the RSPO was held in 2002, when a group of retailers, food manufacturers, palm oil processors and traders, financial institutions and WWF-Switzerland came together in London to discuss sustainability issues in the industry (RSPO 2002). Five years later, in 2007, the first version of the certification system for sustainable

palm oil was launched (RSPO 2007b) and the first certified sustainable palm oil became available in November 2008.

With around 700 members, the scope of participation in the RSPO in absolute numbers is larger than that of the RTRS. However, the RSPO also faces problems, including certain interest groups that consist of many individual actors, such as smallholders, local communities and consumers (Cheyns 2011, RTRS 2011a). Like RTRS members, RSPO members have numerous opportunities to participate in decision-making processes and possess final power and control over the organization's course of action through the General Assembly, where every member has one vote. The RSPO is in this respect different from the RTRS, where voting happens per stakeholder group. In the RSPO, in theory, the constituency with the most members can dominate decision-making during the General Assembly. In practice, some stakeholder groups perceive that this kind of domination sometimes occurs.

While the RSPO managed to include a diverse range of actors in its processes, this range also does not add up to a representative sample of stakes in sustainable palm oil production. For the inclusion of discourses in the RSPO, we see that some more nuanced discourses with respect to sustainable development are possible within the arrangement. However, in essence we see the same pattern occurring as in the RTRS; discourses that are included in the RSPO have essentially a reformist view on sustainable development, and more radical views, that suggest changes at system level and a fundamentally different relationship between economy and ecology, are excluded.

When looking at the discussions in the RSPO in general and the New Plantings Procedure Working group more specifically, no major problems regarding the authenticity of the deliberations were found. Participants in these discussions perceived that the criteria regarding authentic deliberation are mostly fulfilled⁵. They perceived the discussions as being satisfactorily justified, respectful and constructive. Despite some really different vantage points in the debate regarding the New Plantings Procedure, it was possible to reach consensus on this issue.

The deliberative process in the RSPO is consequential in the sense that the standard was developed through a series of organized deliberative processes. In the RSPO there is also a lack of transmission from deliberative processes taking place outside the Roundtable to

⁵ Derived from several interviews with participants of the New Planting Procedures working group, observations during Roundtable meetings and previous work on the RSPO.

deliberative processes inside. However, external discourses do indirectly influence the Roundtable process, as some actors take action outside the Roundtable to address problems pointed out by external actors (e.g. Unilever 2009, Schouten & Glasbergen 2011).

With regard to outcome consequentiality, we see that the number of actors involved in the RSPO is quite large. However, the number of actors actually implementing the standard for sustainable palm oil is still lagging behind. The RSPO requires members to submit public plans of their time-bound sourcing targets and certification plan, but in practice very few companies submit these annual reports. Three years after the first certification, in 2011, around 10% of *global* palm oil supply was certified (USDA 2012). However, the uptake of *certified* palm oil by the market fluctuates around 40% of supply.

4.5 Conclusions

The democratic quality of private multi-stakeholder governance is an important subject of academic and political debate. On the one hand, private multi-stakeholder arrangements are seen as part of a ‘deliberative turn’ and a way of democratizing international environmental governance. On the other hand, the democratic potential of these arrangements has been heavily criticized and interpreted as a privatization of what should be public. To nuance this debate on democratic challenges that are presented by private multi-stakeholder governance, this chapter assessed the democratic potential of one specific type of arrangement: Roundtables. These Roundtables are based on a deliberative democratic rationality and therefore this chapter assessed their deliberative capacity.

In terms of deliberative capacity, we see that the same kind of pattern becomes visible in our two case studies. Although the exact degree of inclusion differs for each individual Roundtable, they include only a limited variety of discourses. Technical knowledge and pragmatic approaches are preferred over local knowledge, and ideological or emotional styles of communication and standards resulting from Roundtable processes are a compromise between similar reformist discourses that have a specific view on the relationship between people, planet and profit. Radical approaches to sustainable development are excluded from the deliberative process. This can be explained by the irreconcilability of radical and reformist discourses on sustainable development. Proposed solutions in a Roundtable setting are sought *within* the current system, whereas more radical approaches suggest fundamental changes *of* the system itself. Reformist discourses

stress the reconcilability of social, environmental and economic values, while radical approaches emphasize the inherent tensions between those values.

The communicative processes in our two case studies showed many characteristics of authentic deliberation. Demands were in general adequately justified, the debates were respectful and showed characteristics of constructive politics. This relatively high authenticity of the deliberative processes can be partly explained by the exclusion of radical discourses from the debate. Furthermore, if transmission between external and internal discourses is lacking, authenticity of deliberative processes in empowered space (within the Roundtable) will be high almost by design.

Output consequentiality for deliberative processes within both Roundtables is high in the sense that the standard was really developed through these processes. However, when we take deliberative processes outside the Roundtable into account, the output consequentiality of these Roundtables is much lower. In both cases the reformist discourse regarding sustainable development is structuralized and institutionalized. This can be partly explained by the lack of transmission from deliberative processes taking place outside the Roundtable to deliberative processes inside. As a consequence of the voluntary nature of Roundtables, the impacts of these arrangements are limited. Unless these Roundtables find a way to connect with public forms of governance, it will be challenging, at the very least, to transform markets by 100 percent, and Roundtables will continue to fall short on the criteria of outcome consequentiality of deliberative processes.

Despite their deliberative rationale, Roundtables seem to fall short on at least two out of three criteria of deliberative capacity: inclusion and consequentiality. Furthermore, there is a lack of transmission from deliberative processes outside the Roundtable setting to deliberative processes within. These shortcomings are not incidental, but seem to be structural and even resulting from the Roundtable 'logic'. At the cost of compromising their deliberative quality, Roundtables adopt pragmatic approaches and stepwise improvements to sustainable development. The lack of inclusion and consequentiality is likely to also have an effect in ecological terms. First, since more radical approaches to sustainable development are not included in the two analyzed Roundtables and neither in their standards (output consequentiality), the radical potential of these arrangements will also be limited in ecological terms. Second, Roundtables tend to fall short on outcome consequentiality as a consequence of their voluntary nature, which will further limit their potential for effectiveness in ecological terms.

This chapter operationalized the concept of deliberative capacity in order to use it as a tool to empirically assess governance arrangements. Our research suggests that the three elements of deliberative capacity (inclusiveness, authenticity and consequentiality) are not independent from each other, but are connected. A low degree of inclusiveness is likely to go together with a high degree of authenticity in empowered space as well as a high degree of consequentiality. Further research on the relations between the three elements of deliberative capacity is needed in order to methodologically improve the concept.

The concept of deliberative capacity provides a valuable tool for analyzing the democratic potential of transnational governance arrangements in a meaningful way. From our analysis we conclude that the functioning of Roundtables seems to conflict with some of the basic ideals of deliberative democracy. Having multiple stakeholders at the table does not necessarily fulfill the criteria of inclusion and consequentiality, especially at the level of discourses. It seems that this type of arrangement endorses reformist approaches to sustainable development, thereby weakening the radical potential of green critique, while favoring market approaches to sustainable development.

Positioning Chapter 5

‘Public and private regulation in interaction: Roundtables and the European Union competing over legitimacy in the biofuel sector’

Chapter 5 aims to answer the following research question:

What are the consequences of the interactions between public and private regulatory strategies on processes of legitimization of private governance arrangements?

While they acknowledged the influence of external actors and processes on legitimization processes of Roundtables, the previous empirical chapters took Roundtables as the key unit of analysis, mainly for analytical reasons. In this last empirical chapter the focus shifts to the interactions of Roundtables with public regulatory strategies and the influence thereof on processes of legitimization. Processes of legitimization are here conceptualized as having an internal and an external dimension. This chapter focuses on biofuels as the arena where interacting modes of governance occur. In this arena, Roundtables represent newly emerged private modes of governance, which are built upon consensus seeking negotiations between an array of stakeholders. The European Union, as a public governance actor par excellence, recently entered the scene with its Renewable Energy Directive (EU-RED) that sets binding targets on renewable energy, e.g. on biofuels' share. The interaction between these two modes of governance triggers a competition between divergent processes of legitimization. In doing so, this competition unintendedly seems to decrease the overall governance capacity in the issue field of biofuels.

This chapter was written in collaboration with Pieter Leroy, and is submitted for publication to an international, peer-reviewed journal.

5 Public and private regulation in interaction: Roundtables and the European Union competing over legitimacy in the biofuel sector

5.1 Introduction

Public-private partnerships and purely private forms of governance have gained increasing importance in the area of environmental governance over the past three decades. This trend towards private regulation continues to change the political landscape (Bartley 2007, Abbott & Snidal 2009, Falkner 2011) and the relational meaning of the concepts of public and private (Bexell 2005).

Roundtables constitute a specific type of private governance arrangement that emerged in the early 2000s in different commodity chains and that are characterized by the following features. First, regarding their composition, Roundtables are organized in a multi-stakeholder fashion. Stakeholders that can participate in their decision-making processes include all actors from the private sphere who either operate within the commodity chain or within civil society (developmental/social and environmental NGOs). Second, and as to their goals, these Roundtables aim to regulate a specific agricultural sector, either a specific product (e.g. sugarcane, soy or palm oil) or product group (e.g. biofuels). In doing so, they do not aim to create a niche market, but to transform a whole sector towards more sustainable production, in brief: ‘mainstreaming’. Third and as to their strategy, Roundtables define principles and criteria (standards) against which products can be certified. Negotiated certification schemes play a pivotal role therein.

Most research on private governance arrangements thus far focuses on their emergence and internal functioning (e.g. Pattberg 2005, Cheyns 2011, Schouten & Glasbergen 2011). However, private governance arrangements do not operate in isolation; yet interact with each other and with state-based regimes (Eberlein *et al.* 2012). Their functioning as well as their legitimacy, therefore, is partly dependent on other private governance arrangements and public policy strategies (Schouten & Glasbergen 2012). Hence, a better understanding of their embeddedness in a wider governance context is crucial (Bitzer *et al.* 2012, p. 372). Falkner (2003, p. 84) even states that “the public-private mix in environmental governance needs to move center-stage in the study of international environmental politics”.

Knorringer *et al.* (2011, p. 59) also argue that “further theorization on voluntary governance should not be undertaken in isolation from debates on public governance”. The interaction between private and public modes of governance is therefore at the heart of this contribution.

Eberlein *et al.* (2012, p.21) distinguish four categories of interaction in which private governance arrangements can engage: competition, coordination, cooptation and chaos. Whilst most scholars emphasize the competitive nature of interactions between private governance arrangements (e.g. Reynolds *et al.* 2007, Bartley & Smith 2010), interactions between public and private governance are often assumed to take the form of coordination (e.g. Vogel 2010, Gulbrandsen 2012). According to Eberlein *et al.* (2012, p. 21) coordination comes about when governance arrangements strive for legitimacy and policy relevance, learn from one another and copy proven ‘recipes for success’. Other scholars point at the financial support and the regulatory environment that public authorities provide to private governance arrangements. Whatever the exact interaction, the exchange and mutual learning, most scholars seem to assume that public and private governance arrangements complement each other and that private governance gains strength by this interaction with the public domain. Therefore, the prevailing idea in academics seems to be that public regulation should support private regulation. Vogel (2010, p. 68) states that “ultimately, private regulation must be integrated with and reinforced by more effective state-based and enforced regulatory policies at both the national and international levels” to ensure future effectiveness of private governance. Based upon a series of analyses in the issue area of biodiversity, Visseren-Hamakers *et al.* (2010) come to the conclusion that private regulatory strategies can only be effective when there is a minimum level of public regulation in place.

Research on public-private interactions mostly focuses on questions regarding the effectiveness of these (supposedly combined) modes of governance. However, these interactions also have a hypothesized effect on the – widely debated - legitimacy of both private and public governance arrangements and regulatory strategies. Gulbrandsen (2012) analyzed interactions between public regulatory strategies and private governance arrangements in the forestry and fishery sectors. First, his results confirm that private governance arrangements can gain from interactions with public regulatory strategies. Secondly, however, he suggests that a mutual reinforcement between public and private is more likely when the state depends on the non-state program for implementing regulations or attaining public policy objectives. Gulbrandsen (2012, p. 14) attributes this effect to the

mechanism of ‘mutual reinforcement of legitimacy’, “which occurs when the certification scheme gains legitimacy from incorporation into public policies; and the state gains the credibility, expertise, and auditing capacity of the scheme”. In brief: he assumes a positive effect of the interactions, not only in terms of effectiveness, yet also on the legitimization processes of private arrangements as well as on the legitimization of public regulatory strategies.

This Chapter, while building on Falkner’s plea, questions the assumed positive effects of public-private interaction. Our analysis, however, does not look at the effectiveness of combined modes of governance, yet on their (competition over) legitimacy. We do so by analyzing the interactions between the European Union (henceforth: the EU) and private governance arrangements in the issue area of biofuels. Here the EU, a public actor *par excellence*, interacts with a variety of private governance arrangements. Part of the latter preceded the EU’s intervention, part of them responded to it as we shall see below. The EU’s intervention that we focus on is the renewable energy directive from 2009 (Directive 2009/28/EC), hereafter mentioned as EU-RED. This directive sets binding targets for renewable energy in the EU (European Commission 2009). For the transport sector this means that all EU member states have to reach the same target of a 10% share of renewable energy (European Commission 2009: Article 3). In order to count towards mandatory national renewable energy targets specified in EU-RED, raw material for the production of biofuels used in the EU needs to comply with a number of sustainability criteria that are defined in the directive (European Commission 2009: Article 17). The European Commission (EC) decided that the sustainability of raw material for biofuels could be checked either by EU member states themselves or through the use of voluntary certification schemes created by private actors, such as Roundtables (European Commission 2009: Article 18). The EU-RED thus implies and necessitates public-private interaction. For private governance arrangements to be recognized as a legitimate actor on the European biofuel market they need recognition of their sustainability standards by the EC under EU-RED.

This Chapter is structured as follows. First, we briefly present our conceptual framework. Then we account for our case selection and data collection methods. Subsequently, the issue-field of biofuels and its specific features are introduced. The analysis of public-private interactions then concentrates on the interactions between EU-RED and two selected case studies. We then briefly examine the interactions of EU-RED with the wider governance system. In the concluding section we reflect on the influence of these interactions on the

legitimization processes of the involved public and private institutions and on their combined and overall governance capacity.

5.2 Public-private institutional interaction: processes of legitimization

Both the Regime and the International Relations approaches have a large body of literature on institutions and institutional interaction. Institutions here refer to: “persistent and connected sets of rules and practices that prescribe behavioral roles, constrain activity and shape expectations” (Keohane *et al.* 1993, p. 4-5). Oberthür and Gehring (2006, p. 6) define institutional interaction as “a causal relationship between two institutions, with one of these institutions (‘the source institution’) exerting influence on the other (‘the target institution’)”. The majority of this literature, however, focuses on interactions between public institutions and, as stated above, looks primarily onto the effectiveness thereof (Oberthür & Gehring 2006, p. 20). When the same issue area is governed by multiple rule-systems, institutions can be identified according to their distinct decision-making processes and governance modes. EU directives and regulations can be considered functional equivalents of specific, in this case public international institutions (Oberthür & Gehring, 2006, p. 23-24). Therefore this chapter regards the EU-RED as exemplary for a public governance mode. In contrast, the two Roundtables that have our main attention, the Roundtable on Sustainable Palm Oil (RSPO) and the one on Responsible Soy (RTRS), typically herald recently emerged private governance arrangements. We will typify them further when we account for this case selection below.

As said, we essentially look at processes of legitimization related to institutional interaction. Legitimacy refers to the acceptance and justification of authority. Suchman (1995, p. 574) defines legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions”. Yet legitimacy is a difficult concept to operationalize. Studies on legitimacy that evaluate governance arrangements on their degree of legitimacy tend to use input and output criteria. While doing so, these studies in fact assess mainly procedural aspects as indicators for input legitimacy and the problem solving capacity of given arrangements as an indicator for their output legitimacy (i.e. Bäckstrand *et al.* 2010, Bexell & Mörth 2010).

Despite the insights these approaches delivered, their application to our cases raises a few

problems. First, most of these studies assess legitimacy in normative terms, either derived from political principles (e.g. 'good governance' and alike) and/or put forward by agencies involved. Consequently, these approaches inform us less about the very processes through which these arrangements become accepted as an authoritative norm, in other words, on how processes of legitimization evolve (Schouten & Glasbergen 2012). Rather than evaluating legitimacy in normative terms, this chapter aims at analyzing the influence of the interactions between public regulatory strategies and private governance arrangements on their respective processes of legitimization.

This brings us to the second issue when applying 'classical' legitimacy approaches to the interaction between private and public modes of governance: these different modes refer to different sources of legitimacy and, therefore, reflect divergent processes of legitimization. In brief: the legitimacy of public actors such as the EU, is rooted in constitutional approaches to democracy. Constitutional democracy entails that "all political authority is understood to derive from the sovereign people who, conceived as equals, exercise their constituent power to create and define the nature and limits of ordinary political authority" (Freeman 1990, p. 348). These approaches, however, do not fit private governance arrangements (Fuchs *et al.* 2011). In contrast, the legitimacy of multi-stakeholder private governance arrangements rather originates from deliberative approaches to democracy (e.g. Dingwerth 2007, Meadowcroft 2007, Kronsell & Bäckstrand 2010). These approaches emphasize communication and reflection in decision-making (Dryzek 2010). "Deliberation is based on arguing and persuasion as non-hierarchical means of steering to achieve a reasoned consensus rather than a bargaining compromise" (Risse 2004, p. 16). Furthermore, public policy's legitimacy originates from representation, from formalized procedures of implementation, from effectiveness, and from procedures of accountability vis-à-vis the politico-geographical constituency. In contrast, multi-stakeholder private governance arrangements build their legitimacy on the consensus of a large group of wide-ranging stakeholders, with their respective expertise and interests, on a common and transparent rule making, and on shared responsibility. They thereby basically assume that broad participation in collective decision-making will result in more effective and more legitimate policy outcomes (Bäckstrand *et al.* 2010).

Third, while analyzing processes of legitimization in (interacting) public and private arrangements, we distinguish two dimensions: internal and external legitimization (Biermann & Gupta 2011). This distinction originates from organization sociology and relates to the various audiences that (are supposed to) grant their legitimacy to governance

arrangements. Internal legitimacy is granted by audiences directly affected by and having a direct interest in the policies of an institution. For Roundtables these are typically actors in the commodity chain and social and environmental interest groups. External legitimacy then is granted by audiences that are not directly participating in an arrangement and refers to the acceptance of a rule by non-members or non-participants (Cashore 2002, Biermann & Gupta 2011). As we will see below, interactions between public and private governance arrangements create different audiences and different demarcations between the internal and the external ones. Therefore, these interactions may also influence the respective processes of legitimization.

5.3 Case selection and data collection: the Roundtables on sustainable palm oil and responsible soy

As was made clear above, the analyzed case of this chapter involves the EU's recent biofuels policies as one institution, while two front-running private governance arrangements -the Roundtable on Sustainable Palm oil (RSPO) and the Roundtable on Responsible Soy (RTRS)- are the other. Other agencies and institutions involved are presented in the next section. Both selected Roundtables are mature, well-established organizations that have been certifying products for several years. Both include private actors solely in their decision-making processes. Both RSPO and RTRS were initiated as collaborative efforts of business actors and NGOs.

Both RSPO and RTRS not only developed independently of EU-RED, initially these Roundtables operated in a different field: while EU-RED deliberately focuses on sustainable energy, e.g. biofuels, palm oil and soy are mostly used as food and feed crops, with sustainable energy as a side-outlet. Both palm oil and soy are produced on a large scale, are consumed globally, and are of major importance on global agricultural markets. Both crops are used in food products, as animal feed, yet they can also be used as biofuels. The production of palm oil and soy is associated with severe sustainability challenges. The main production areas of oil palm are in Malaysia and Indonesia, where the expansion of production leads to loss of biodiversity and is a threat to social, economic and land rights of local communities. The expansion of soy production contributes to very similar problems albeit mainly in Latin America.

The RSPO was initiated in 2002 and is generally regarded as the first of the Roundtables, while the RTRS was initiated in 2004 and was largely based on the RSPO-model (Schouten

et al. 2012). Their governance structure and decision-making processes are such that commodity chain actors, as well as environmental and developmental NGOs are represented in their Executive Board and General Assembly. In both cases the General Assembly is the highest decision-making body. The RSPO counts over 1000 member organizations, divided into several membership categories: Oil Palm Growers; Palm Oil Processors and/or Traders; Consumer Goods Manufacturers; Retailers; Banks and Investors; Environmental/Nature Conservation NGOs; Social/Developmental NGOs; and Affiliate members. Affiliate members do not have decision-making power or voting rights within the RSPO. Through a series of multi-stakeholder working groups, members of the RSPO spent several years designing Principles and Criteria (P&C) for sustainable palm oil production, a verification and certification process, and mechanisms for supply chain traceability and tradable credits. The first certified palm oil entered the market in November 2008. The RSPO P&C were reviewed in 2012-2013 by the RSPO Principles and Criteria Review Taskforce. The objective of the review was to improve the relevance and effectiveness of the P&C and resulted in the production of the revised RSPO P&C for Sustainable Palm Oil Production that was approved by the General Assembly in April 2013 (RSPO 2013a).

The first RTRS meeting was held in 2004, when WWF invited 25 stakeholders to discuss the idea of addressing sustainability issues in mainstream soy production through a multi-stakeholder process (RTRS 2010a). The RTRS has approximately 150 members, which are divided into four categories: Producers; Industry, Trade and Finance; Civil Society; and Observers. Observing members have no decision-making power or voting rights in the RTRS. The first certified soy from South America came to Europe in June 2011.

This chapter builds on earlier and extensive research on the RSPO and RTRS (Schouten & Glasbergen 2012, Schouten *et al.* 2012). For this chapter more specifically, we conducted an extra ten semi-structured in-depth interviews with all actors that were actively part of the approval processes of the RSPO and RTRS under EU-RED. These interviews took place in the second half of 2012. From the RSPO-side, two key business actors and the independent consultant hired by RSPO who made up the task group on EU-RED were interviewed. For the RTRS, the three key actors involved in the biofuels working group and the facilitating consultant were interviewed. Furthermore, we did three in-depth interviews with civil servants from the European Commission, one each from the Directorate General (DG) Energy, DG Agriculture and DG Environment respectively. All interviewees are part of a small group involved in these interactions. To guarantee their anonymity, the text only

indicates whether the interviewee was involved from the side of the RSPO, the RTRS or the EC (e.g.: interview data RSPO). The interviews were complemented by secondary data sources, including policy documents, scientific reports, press releases and documentation regarding several private standards.

5.4 Fragmentation and controversy in the issue-field of biofuels

The governance of the issue-area of biofuels can be characterized as fairly fragmented and highly controversial. Currently, various public regulatory strategies and many private governance arrangements are involved in its governance. By the time the EU issued its directive, in 2009, various Roundtables and other private governance arrangements had already started to govern agricultural sectors that produce for the biofuel industry. Some of these sectors display severe sustainability challenges.

The Roundtable on Sustainable Biofuels (RSB), initiated in 2007, developed a voluntary certification scheme for biofuels and can be seen as an attempt to prevent fragmentation in the issue field. The RSB is an atypical Roundtable, for several reasons. First, the RSB is not a private governance arrangement in the strict sense, since it formally includes governmental actors in its decision-making processes. Second, the RSB was initiated by a scientific institution, the Swiss EPFL (École Polytechnique Fédérale de Lausanne). Only recently, as of January 1, 2013, the RSB formally shifted to being an independent non-profit organization (RSB, 2013). Third, the RSB does not regulate a specific agricultural product or sector, but a whole range of agricultural products that are grouped together based on their end-use as biofuels. Yet it does not succeed in preventing fragmentation, as oil companies and other private actors are often members of more than one private governance arrangement. Shell, for example, is a member of the RSB, RSPO, International Sustainability and Carbon Certification (ISCC), Bonsucro and RTRS (Shell 2011).

The EC in a way acknowledged this fragmentation when deciding that companies can opt to demonstrate compliance with the sustainability requirements of EU-RED for biofuels either through national systems or by joining a voluntary scheme that is recognized by the EC (European Commission 2009: Article 17). The EC defines these voluntary schemes as: “control systems that certify sustainability of biofuels” (European Union 2011). In order to be recognized, these private voluntary schemes have to include several criteria specified in the directive. These criteria in particular aim to avoid the conversion of areas with high

biodiversity and high carbon stock, such as forests or peat lands. In addition, greenhouse gas emissions over the whole production chain need to be at least 35% lower compared to fossil fuels (European Commission 2009: Article 17).

The Commission received at least 25 applications of voluntary schemes, 13 of which are currently recognized (January, 2013). In July 2011, the first schemes were approved: ISCC, Bonsucro EU, RTRS-RED (Round Table on Responsible Soy RED), RSB EU-RED (Roundtable of Sustainable Biofuels EU-RED), 2BSvs (Biomass Biofuels voluntary scheme), RBSA (Abengoa RED Bioenergy Sustainability Assurance), and Greenery (Greenery Brazilian Bioethanol verification programme) (European Commission 2012a). Later on, five other schemes were recognized: Ensus voluntary scheme under RED for Ensus bioethanol production, Red Tractor (Red Tractor Farm Assurance Combinable Crops & Sugar Beet Scheme), SQC (Scottish Quality Farm Assured Combinable Crops scheme), Red Cert, and NTA 8080 (European Commission 2012a). In November 2012, also RSPO-RED (Roundtable on Sustainable Palm Oil RED) was recognized by the commission.

These developments were not without controversy. While initially some regarded biofuels as an environmental friendly alternative to fossil fuels in tackling climate change, the production of biofuels rapidly provoked huge protest by environmental and developmental NGOs, including Greenpeace, Friends of the Earth, and Oxfam-Novib, claiming that biofuels cause severe environmental and social problems (Milieudefensie and Friends of the Earth Europe 2010, Oxfam 2012). These arguments are shared by scientific assessments as well, for instance by the European Environment Agency's Scientific Council (EEA 2008) and the European Environment Agency itself (EEA 2011). Research makes clear that biofuel production might cause land-use change by conversion of previously non-farmed land, leading to a loss of biodiversity, and might compromise food security by reducing the land that is available for the production of food (Overmars *et al.* 2011). In 2011, a report prepared by ten international organizations, including the World Bank, the International Monetary Fund, The World Food Programme, and the Food and Agriculture Organization of the United Nations, urges the G20 governments to "remove provisions of current national policies that subsidize (or mandate) biofuels production or consumption. (...) Failing a removal of support, G20 governments should develop contingency plans to adjust (at least temporarily) policies that stimulate biofuel production or consumption (in particular mandatory obligations) when global markets are under pressure and food supplies are endangered" (FAO 2011, p. 26).

Not surprisingly thus, the adoption of the Renewable Energy Directive (EU-RED) in 2009 provoked much protest. Immediately after its first draft was presented in 2008, the potential social and environmental impacts were publicly debated. Partly in response to these debates, the requirements for sustainability were further elaborated in a revised note by the European Council (Oosterveer & Mol 2010, p. 69). However, the controversy on EU-RED remained. Oxfam, for example, published a report urging the EU to scrap national biofuel mandates and: (1) to remove the 10% target for renewable energy in the transport sector from EU-RED, (2) to include binding criteria on indirect land use change caused by biofuel production, and (3) to include binding social criteria next to the environmental ones (Oxfam 2012). As a consequence of these debates, in October 2012 the EC published a proposal with the aim “to limit global land conversion for biofuel production, and raise the climate benefits of biofuels used in the EU”. Therefore, the use of food-based biofuels was to be limited to 5% to meet the 10% renewable energy target of the Directive (European Commission 2012b). In brief: while the governance over biofuels is and remained highly fragmented, the legitimacy of EU-RED is not uncontested.

5.5 Analyzing EU-RED’s interactions with private schemes

The interactions between EU-RED and the voluntary schemes led to reactions on two distinguishable levels, that the two sections below deal with. On the level of the private governance arrangements concerned, each of the two selected Roundtables designed an Annex to apply for recognition under EU-RED. On the level of the private governance regime as a whole, the interactions between EU-RED and private governance arrangements led to the emergence of several new private schemes. Either reaction has implications for the legitimacy of the arrangements concerned and for the biofuels regime as a whole.

5.5.1 Two Roundtables developing an annex

The European Commission (EC) assesses the submitted voluntary schemes for the quality of their control system and for their reliability. Part of this assessment is outsourced to consultancy firms. Typically, schemes need to make amendments to their rules; these amendments go back and forth between the consultancy firm and the voluntary scheme before its eventual submission to the EC. This latter process is handled by DG Energy. Once it reaches a draft decision, DG Energy initiates a consultation process with DG Environment and DG Agriculture. The consulted DGs have to respond to the draft decision of DG Energy, while DG Energy has to take the comments of these other DGs into account and possibly to revise its decision. When this consultation process is finished, the

newly drafted decision has to be approved by all EU Member States. Subsequently, the Commission adopts the decision to recognize a scheme. The current recognitions are valid for five years.

As the European biofuel market is a relevant market for palm oil and soy producers, both the RPSO and RTRS decided to apply for recognition under EU-RED to become a legitimate player on this market. However, the schemes established by RSPO and RTRS preceded EU rulings and were in operation for some years by the time EU-RED was issued (2009). Consequently, these standards, which had been developed through complex multi-stakeholder processes, did not fully comply with the EU-RED criteria. Therefore, the Roundtables needed to find a way to comply with the EU's requirements to secure their external legitimacy, while simultaneously securing internal consensus and legitimacy.

RTRS: applying for recognition by the EC under EU-RED

The RTRS was among the first group of voluntary schemes recognized by the EC. In order to attain this recognition, the RTRS created a particular working group to design a biofuel annex to the RTRS standard that complies with EU demands. This annex was presented to DG Energy during summer 2010. This annex is additional to the generic RTRS standard and is optional for soy producers that produce soy for biofuels for export to the EU (RTRS 2010b). In contrast with RTRS practices thus far, the aforementioned RTRS working group lacked representation of civil society. It mainly consisted of oil traders and producers and was facilitated by the consultancy firm Proforest. The German development agency GIZ was part of the working group mainly to provide technical knowledge on greenhouse gas calculations.

In addition, one participant of this working group was also involved in the development of another certification scheme for the Argentine biofuel industry association CARBIO. The CARBIO Sustainability Certification Scheme (CSCS) “has been developed to demonstrate the sustainability of the soybean biodiesel and their consequent inputs (biomass, intermediate products), produced or traded by them, in conformity with the EU RED” (Idígoras & Papendieck 2011). It has been designed to cover the production of Argentine Soybean Biodiesel solely. The other members of the working group did not appreciate this development as this quote from one of the participants reveals: “*Basically they [CARBIO] were creating a competitive system to the RTRS-RED. (..) How much relevance does RTRS-RED then have? And why are they creating their own scheme?*” (interview RTRS). The CARBIO scheme has not been recognized by the EC (yet), but has been submitted. From the interviews it seems that CARBIO copied a lot of information from RTRS’

working group to develop its own scheme, but covers less issues than the RTRS scheme and mainly restricts to greenhouse gas emissions (interview data RTRS; to our knowledge the CARBIO standard is currently not publicly available). The representative of this Argentinian industry association is no longer participating in the RTRS (personal communication).

RSPO: applying for recognition by the EC under EU-RED

Biofuel companies and traders (including Shell, Nesté Oil and Cargill) within the RSPO were also interested in getting the RSPO standard recognized under EU-RED (interviews RSPO). Other actors in the RSPO, however, were ambivalent towards the issue of biofuels and some were even plain negative about it, because of the aforementioned controversies (interview data RSPO). Because of these different views within the RSPO, the Roundtable did not want to alter its already existing standard, as that would have to go through the complex multi-stakeholder processes again. Rather, the RSPO also opted to develop an annex to its own scheme, in order to comply with EU-RED and to avoid tensions within the private arrangement itself. The Executive Board supported the submission of the RSPO scheme plus biofuel annex to the EC. It established a task group on EU-RED and hired a consultant to facilitate this recognition process. This task group, again, consisted mainly of representatives of large oil companies (Shell and Nesté Oil) (RSPO 2011b). Much of the contact in this process was directly between Shell and the consultancy firm Ecofys, hired by the EC. Shell even invited Ecofys to its office to adapt the annex together, to try and speed up the recognition process (interview data RSPO). The RSPO applied to the EC for formal recognition under EU-RED in September 2010.

Similar to RTRS thus, also RSPO opts for a process that clearly contrasts with the standing working procedures of the RSPO, in which working groups consist of a representative group of stakeholders that tries to reach consensus on contentious issues. In addition, the standing decision-making procedures are quite transparent and well documented (Schouten and Glasbergen 2011). In contrast, there is very little documentation on the workings of this particular task group: decision-making processes are not well documented, no public minutes of meetings could be found, and participants of the task group indicate that decision-making was incidental and ad hoc (interview data RSPO). Therefore, we conclude that RSPO seems to have depoliticized the issue, by reducing it into a technical issue and by taking on a different decision-making practice.

A consequence of the interactions between EU-RED and the RSPO is that RSPO-RED is not applicable to smallholders. When the RSPO applied for recognition under EU-RED,

the standards for certification of independent smallholders (group certification) were under development, meaning that certification of these producers would not be possible under RSPO-RED requirements (RSPO 2012c). As an interviewee stated: *“The RSPO standard for independent smallholders is under development and therefore certification is not possible under RSPO-RED. They are thus excluded from certification. In practice this is probably not a big problem, but in principle it is”* (interviewee RSPO).

In addition, interviewees from both the public and the private side problematize the lack of transparency in the approval process of the EC. One interviewee said: *“No, the process is not transparent. That much you can say on this in general. The market supplies schemes and the European Commission assesses these. But how they do this and why certain schemes are assessed earlier than others and why some things take less time and others more, that is not transparent at all”* (interviewee RSPO). For instance: there is no set timeframe within which a decision should be reached. It took more than two years after the RSPO’s first application to get its recognition by the EC (November 2012). Throughout this lengthy process it was unclear when a decision by the EC could be expected and what exactly was the hold up.

Opting for an annex

As indicated above, both RTRS and RSPO, when applying for recognition under EU-RED, opted for an annex and for particular decision-making processes which clearly differed from what was well-established practice within either Roundtable. Both the RTRS-RED and RSPO-RED annexes are voluntary add-ons to the general RTRS and RSPO standard respectively. Both annexes thus apply to those producers who want to sell their palm oil or soy to the EU biofuel market only. The annexes can only be used in combination with the generic RTRS and RSPO standards. *“The RSPO-RED scheme comprises the RSPO standard laid down in key RSPO documents (i.e. the RSPO Principles & Criteria, the RSPO Certification Systems, RSPO Supply Chain Certification Systems and RSPO Supply Chain Certification Standard), plus the document ‘RSPO-RED Requirements for compliance with the EU Renewable Energy Directive Requirements’”* (RSPO 2013b). Thus, under RSPO-RED and RTRS-RED, all requirements of the generic standards also apply.

EU-RED demands a 35% GHG reduction (50% as of 2017) and requires private standards to include criteria to secure this. However, GHG emissions have been and still are a contentious issue in both Roundtables. In 2009 some members threatened to walk out of RSPO’s General Assembly due to the proposed GHG emission criteria (Adnan 2009). Recently, the controversy surrounding GHG criteria surfaced again in the RSPO related to

the review process of the P&C. One of the main issues addressed in the review was the issue of GHG. Articles in the Malaysian newspaper 'the Star' highlighted Malaysian oil palm growers' objection to the fact that the revised RSPO P&C seek to minimize GHG emissions from new plantings (Wong 2013). In response, the RSPO urged their members to vote in favor of the revised P&C during an extraordinary general assembly (RSPO 2013c). In April 2013 the revised P&C were approved by this general assembly. In the revised P&C "growers and millers have committed to an implementation period that begins with initially reporting to the RSPO, and after December 31, 2016, the commitment will transmit to public reporting". Even though this is a rather weak reporting criterion, it is still highly contentious. One of the arguments put forward by the opponents of GHG criteria to be included in the standard is that GHG emissions do not need to be considered in a standard for the food industry. In contrast, the main sustainability concerns in the biofuel sector are related to GHG emissions. Recently (May, 2013), there was a report in a Malaysian newspaper that "the Malaysian Palm Oil Association (MPOA) is believed to be mulling over a decision to quit the Roundtable on Sustainable Palm Oil (RSPO) grouping by the end of the year" (Adnan 2013). The MPOA has 130 members and represents a large part of the private plantation industry. One of the reasons to possibly quit the RSPO is related to the newly revised P&C on the issue of GHG.

Because of these tensions, GHG criteria are hardly addressed in the generic standards of both Roundtables. Through EU-RED, however, the GHG issue was prominently put on the agenda again. To not jeopardize the internal legitimization process of the Roundtables, both arrangements decided to opt for a different approach and strategy: to have a working group to design an annex as an add-on to the generic standard. The RSPO-RED annex poses a number of additional requirements to the generic RSPO P&C, in particular in relation to:

- "Land use, or more specifically in relation to land with a nature protection, wetlands and peat lands.
- Greenhouse gas criterion, under RSPO-RED requirements palm oil producers must comply with the 35% greenhouse gas reduction criterion specified in EU-RED (and the 50% greenhouse gas reduction criterion from 1 January 2017).
- Only Mass Balance or segregated chains of custody are permitted. Book and Claim (Greenpalm) is not sufficient to demonstrate compliance" (RSPO 2013b).

The RTRS-RED annex poses additional requirements on GHG reduction, land use and carbon savings.

By developing an annex the RSPO and RTRS opted for two separate legitimization strategies: one that is able to keep the internal consensus and legitimization regarding the generic standard intact and another, developing the annex, that seeks recognition of a public regulatory strategy. Internal legitimization asks for leaving out certain contentious issues, GHG in particular. Putting these contentious issues into an annex enables the Roundtables to gain external legitimization.

5.5.2 Newly emerging private schemes

Next to an analysis of the reactions of particular private arrangements to the EU-RED establishment, we now turn to the reactions in the broader biofuels governance system. First, we look at the divergent conceptions of sustainability. Second, we report on the variety of newly emerging private schemes. Based upon this analysis, we will then conclude upon the legitimization issues within the biofuels governance system.

EU-RED uses a sustainable development concept that substantially differs from the concept as implemented by the RSPO and RTRS. The Principles and Criteria (P&C) of both the RSPO and RTRS include multiple dimensions of sustainable development and, adjacent to these, include a series of criteria originating from ‘Good Governance’ principles. The RSPO standards consists of eight principles that are accompanied by multiple criteria and indicators: Commitment to transparency; Compliance with applicable laws and regulations; Commitment to long-term economic and financial viability; Use of appropriate best practices by growers and millers; Environmental responsibility and conservation of natural resources and biodiversity; Responsible consideration of employees and of individuals and communities affected by growers and mills; Responsible development of new plantings; Commitment to continuous improvement in key areas of activity. The RTRS standard consists of five main principles accompanied by multiple criteria and specific guidance: Legal Compliance and Good Business Practice; Responsible Labor Conditions; Responsible Community Relations; Environmental Responsibility; and Good Agricultural Practice. In conclusion: both the RSPO and RTRS cover, albeit to a certain extent, social, environmental and economic dimensions of sustainable development. In addition, these standards resulted from a multi-stakeholder process to which many different actors contributed, informed by their respective interests and expertise. In other words, these standards, while being substantially quite broad, are the output of a multi-stakeholder process. Yet the ambition to attain consensus went at the detriment of the GHG issue, that was largely excluded.

In contrast, the criteria for biofuels included in EU-RED focus on environmental issues only, in particular on GHG emission savings and on biodiversity, e.g. the protection of rare, threatened or endangered ecosystems or species (European Commission 2009: Article 17). Social and economic criteria are not covered by the sustainability requirements in EU-RED. The directive addresses social and economic dimensions of sustainable development only indirectly, by requiring that the EC reports every two years to the European Parliament and the Council on:

- the impact on social sustainability in the Community and in third countries of increased demand for biofuel;
- the impact of Community biofuel policy on the availability of foodstuffs at affordable prices, in particular for people living in developing countries;
- wider development issues;
- the respect of land-use rights;
- whether third countries and Member States that are a significant source of raw material for biofuel consumed within the Community have ratified and implemented the International Labor Organization (ILO) Conventions No. 29, 87, 98, 100, 105, 111, 138, and 182; the Cartagena Protocol on Biosafety; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (European Commission 2009: Article 17 (7)).

In addition, while participatory and deliberative approaches are seen as an important part of sustainable development (Brundtland 1987, Rio Declaration 1992), increasingly echoed in the debates on ‘good governance’, EU-RED does not include process criteria for the development of (private) standards to be recognized by the EC. Yet the multi-stakeholder fashion in which they are designed are an important source for justification and legitimacy of the Roundtable standards (Schouten & Glasbergen 2011, Schouten *et al.* 2012). Roundtables have an incremental approach to rulemaking, in which the standard can be subject to change if new insights come to the fore. Knowledge is not seen as univocal, but as negotiable. EU-RED, in contrast, presents its rules as unambiguous, technical solutions that are fit for the acknowledgement procedures of private schemes. This is nicely illustrated by a quote by one of the interviewees (RSPO): *“Certification as approached by the EU [RED] is designed to avoid risks. Risks of biodiversity, carbon stocks, etc. They do not concentrate on creating benefits for, for example, smallholders.”*

Although understandable in itself, the fact that EU-RED reflects a narrow conception of sustainability and does not include process criteria to assess the quality and reliability of voluntary schemes, has its implications for the further responses to EU-RED. In fact, EU-RED provoked the emergence of a whole series of initiatives. One can distinguish three types of certification schemes that are (to be) recognized by the EC. First, multi-stakeholder initiatives, such as RSPO and RTRS. Second, sector initiatives driven by business actors, e.g. an industry consortium that developed a certification scheme, e.g. REDcert and 2BSvs. Third, single companies that developed a specific scheme geared towards their own business and covering their internal supply chain, e.g. Ensus, Abengoa and Greenergy.

Table 5.1 below makes clear that all multi-stakeholder initiatives preceded the issuing of EU-RED in 2009. These multi-stakeholder arrangements thus developed their standard independent of EU-RED and generally include more criteria than included in the directive (e.g. ISCC, RSPO, RTRS, Bonsucro, RSB). In contrast, some sector and company schemes emerged right after the adoption of EU-RED, and clearly responded to that. Many audiences consider these industry standards to be inferior to the Roundtable standards: *“The market says: whatever is legal and whatever is recognized by the Commission is fine for us, why should we do more?”* (interviewee RTRS).

Table 5.1: Certification schemes recognized under EU-RED

	NAME	TYPE	STANDARD DEVELOPED	COVERAGE	FEEDSTOCK	GEOGRAPHICAL FOCUS
1	ISCC	Multi-stakeholder	2008-2010	In addition to the RED criteria, ISCC covers social and environmental requirements.	Any	Global
2	Bonsucro EU	Multi-stakeholder	2005-2010	In addition to the RED criteria, Bonsucro covers social and environmental requirements.	Sugar cane	Global
3	RTRS RED	Multi-stakeholder	2004-2010	In addition to the RED criteria, RTRS covers social and environmental requirements.	Soy bean	Global (outside of the EU)
4	RSB EU-RED	Multi-stakeholder	2006-2010	In addition to the RED criteria, RSB	Any	Global

				covers social and environmental requirements.		
5	2BSvs	Industry consortium	Specifically for EU-RED	RED requirements only	Any	Global
6	RBSA Abengoa RED	Single company	Specifically for EU-RED	RED requirements only	Any	Global
7	Greenergy	Single company	Developed for UK RTFO	In addition to the RED criteria, Greenergy covers some social and environmental requirements.	Sugar cane	Brazil
8	Ensus	Single company	Developed for UK Renewable Transport Fuel Obligation (RTFO). In December 2011, the RTFO order was amended to implement the sustainability criteria of EU-RED.	RED requirements only	Wheat	UK and other EU member states
9	Red Tractor	Industry consortium	Founded in 2000	In addition to the RED criteria, Red Tractor covers social and environmental requirements.	Cereals, oil seeds, sugar beet	UK
10	SQC	Industry consortium	Founded in 1994	In addition to the RED criteria, SQC covers some environmental requirements.	Winter wheat, maize, oil seed rape	Scotland and North England
11	REDcert	Industry consortium	Founded in 2010	RED requirements only	Any	EU + selected member states
12	NTA 8080	Multi-stakeholder	Based on earlier developed Cramer criteria	In addition to the RED criteria, NTA 8080 covers social and environmental requirements. However, this system offers the possibility to issue	Any	Global

				an 'NTA RED' certificate to companies that are in compliance with the European mandatory sustainability criteria, but do not yet meet all the requirements of NTA 8080. These companies need to meet all NTA 8080 requirements within five years (NTA 8080 2012).		
13	RSPO RED	Multi-stakeholder	2002-2010	In addition to the RED criteria, RSPO covers social and environmental requirements.	Palm oil	Global

This table is partly based on German and Schoneveld (2012) combined with information from the individual scheme websites and documents from the European Commission. For a list of approved schemes and decisions see: http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm

These latter standards apparently were developed with the sheer goal to comply with the directive and therefore only include criteria that are specified in EU-RED. Interviewee: *“What we have seen is that specific schemes have been developed to comply with EU-RED as easy as possible. It is easy to comply if you don't have difficult stakeholders to deal with”* (interviewee RSPO). German and Schoneveld (2012, p. 776) evaluated the first seven schemes that were approved by the EC under EU-RED and concluded that two of them (Abengoa and 2BSvs) take a “minimum compliance approach with EU-RED and are devoid of any commitment to social sustainability”. Both of these schemes have a very broad scope as they cover any type of feedstock and can certify globally. Hence they provide an important avenue for “socially unsustainable projects to successfully gain certification and, thereby, legitimize their practices” (German and Schoneveld 2012, p. 776). Another single company scheme (Greenery) watered down its standard for compliance with EU-RED (German and Schoneveld, 2012). As one interviewee put it: *“What we really see is a run to the bottom, and the bottom is the EU-RED regulation. This I would say is a major problem, if you want to say EU-RED is promoting sustainable biofuels. I would put a big question mark behind that”* (interviewee RTRS).

A huge frustration on the RSPO side was that, as of July 2011 until November 2012, palm oil could be certified under these new and less comprehensive company standards, while the RSPO-RED was still not approved by the EC. Many interviewees perceived this as being unfair. An interviewee from the EC recognizes this critique by stating: *“The RED opens up the possibility for different standards to be applied and on top of that the private schemes can differ considerably. There can be stronger ones and weaker ones. And it is, I believe, a genuine concern that products that do not qualify for one scheme, might qualify for another”*.

With regard to these divergent schemes and the criteria they do or do not comprehend, the Commission communicates that it can revoke its decision if a certain scheme would not follow the agreed set of rules. However, there is no set procedure to check whether a scheme follows the rules indeed, neither is there any conflict resolution mechanism put in place. As stated earlier, the processing that resulted into a scheme and that is put in place to implement it, is not a part of the recognition. *“Another issue is that we really don’t have any requirements for evaluating the internal governance structure of a scheme. If it is a Roundtable, it would assume some sort of democratic decision-making structure and stakeholder involvement. But we just don’t know, because we don’t have such requirements.” (...)* *“We have no way of judging the legitimacy of a scheme. That is a potential problem”* (interviewee EC). The RSPO and RTRS both have their own conflict resolution mechanisms in case a conflict arises. In the words of an interviewee from the Commission: *“The original Commission decisions can’t contain any reference to dispute resolution or any amendments. They gave green light to schemes for 5 year unconditionally. (...) But that [a conflict resolution mechanism] is still missing. That is a bit of a problem. The better private schemes even have a dispute resolution mechanism”* (Interviewee EC).

In brief, the establishment of EU-RED has provoked substantive and procedural changes within the pre-existing schemes of RSPO and RTRS, and has provoked the emergence of a series of quite different sector based private schemes. It seems as if, even disregarding their divergent coverage of sustainability dimensions, all these initiatives have rather reproduced the highly fragmented governance of biofuels and raised some extra tensions. The latter are nicely illustrated by this quote from an interviewee from the EC: *“Europe is only a small fraction of the market for palm oil and certainly for biofuels. We cannot expect a [multi-stakeholder] scheme like that [RSPO] to design their scheme around our requirements if those are not the most important and relevant requirements that they can think of. (...)The*

more autonomous such a regime is, the less likely it is it functions properly with the EU requirements, because we are rigid and disconnected and they have to be flexible and responsive to their own needs. There is an inherent conflict there”.

5.6 Conclusion

This chapter focused on the interaction between private and public governance, with the dynamics in the biofuels governance as empirical example. The predominant, yet empirically underexplored hypothesis is that interactions with the public domain would (and should) strengthen private governance. Echoing other scholars, Gulbrandsen (2012) suggests that a mutual reinforcement between public and private is likely to occur when the state depends on a private governance arrangement for the implementation of regulation or for attaining policy objectives. He refers to the mechanism of ‘mutual reinforcement of legitimacy’, “which occurs when the certification scheme gains legitimacy from incorporation into public policies; and the state gains the credibility, expertise, and auditing capacity of the scheme” (Gulbrandsen 2012, p. 14).

Our analysis of the dynamic interactions in the biofuels domain, however, did not reveal a process of mutual reinforcement of legitimacy. Rather, the interactions between EU-RED and several private governance arrangements create risks of de-legitimization. Let us briefly iterate the argument in the conceptual terms introduced above. First, even though some private governance arrangements preceded EU-RED, the establishment of the latter incentivized the former to seek EU-RED recognition. Yet, to comply with EU-RED (i.e. to gain *external legitimacy*), they were obliged to address the issue of GHG reductions - that they internally put aside as it was and is a contested issue within both RSPO and RTRS -. This urged for balancing between internal and external legitimacy. Therefore, these Roundtables adopted ad hoc working procedures to create an annex. This annex deals with the required GHG issues and was not submitted for approval by their members. While the former was needed for EU-recognition, e.g. external legitimization, the latter may threaten the internal legitimization processes of the Roundtables. As we know, equal representation, transparent deliberation and consensus are their crucial sources of legitimacy. Therefore the external legitimization process risks to be at the detriment of the internal one. For now, the annex might fulfil its role as trade-off and balance, yet it is unsure for how long it might succeed to do so - given the other responses to EU-RED we turn onto now -.

Indeed, not only the preceding RSPO and RTRS were affected by EU-RED, the establishment of the latter had an even wider impact on the biofuels governance system as a whole. EU-RED indeed provoked the emergence of new private governance arrangements with much more restricted and weak sustainability criteria than the Roundtables, and yet these were also (externally) legitimized by EU-RED. In other words, and second, there is no single, yet a series of simultaneous processes of public-private governance interactions, in which these latter dynamics also influence the process of legitimization of EU-RED, RSPO and RTRS. Instead of a mutual reinforcement, a gradual erosion of legitimacy seems more likely. Indeed, as industry actors are able to legitimately use the narrower standards, less actors might be willing to participate in a more comprehensive approach to sustainability as presented by multi-stakeholder initiatives, e.g. the Roundtables. In other words, the interactions of EU-RED with the private governance arrangements it has provoked to emerge might threaten the (internal) legitimacy of the private arrangements that preceded EU-RED. Simultaneously, it is clear that a lot of stakeholders involved in RSPO and RTRS, and not only NGOs, do not attribute legitimacy to EU-RED as they regard the directive in itself as well as its effects as highly undesirable.

Third, one could speculate whether we risk to witness a gradual substitution of the standards put forward by RSPO and RTRS by the narrower and softer standards originating from industrial sectors and companies. Whatever their respective future weight and impact, EU-RED seems to have reproduced the fragmentation of the biofuels governance system as a whole, and to have decreased its overall (potential) governance capacity.

In conclusion, rather than observing mutually reinforced processes of legitimization between private and public governance arrangements, our case study reveals that their interaction can create a complex competition over legitimacy. We cannot and will not generalize our findings. Yet the thus far dominant hypothesis of mutual reinforcement and our counter-hypothesis of competition deserve further research on the conditions under which interacting private and public governance arrangements do contribute to one another's legitimacy and capacity or rather erode these.

6 Conclusions and reflections

6.1 Introduction

This dissertation began with the observation that over the past few decades, non-state actors, such as nongovernmental organizations (NGOs) and businesses, have increasingly gained prominence in global governance of sustainable development. Particularly business-NGO partnerships have become important standard-setting and certifying governance arrangements. As outlined in the introductory chapter of the dissertation, these private governance arrangements face several challenges regarding their capacity to govern an issue field. Many of them operate on a global level, transcending national borders, while their rules are implemented locally, within a specific territorial area. Standards are often initiated in developed countries, whilst they need to be implemented in a developing context. The large distance between the constituencies involved is a first source of tension. Tensions may also arise from collaborations between NGOs and business actors, as they come from different spheres of society - civil society and the market -, and their activities are based on different core logics. Moreover, it might be a challenge for private actors to simultaneously advance their private interests and regulate public issues; that is, issues which are of common interest. In light of these challenges, the emergence and institutionalization of private governance arrangements provoked many (normative) debates in practice as well as in the academic literature. Many of these debates are related to the legitimacy of these arrangements.

The vast majority of the academic literature focuses on democratic legitimacy related to private governance and uses a specific conception of legitimacy which makes the distinction between input and output legitimacy. The scope of such approaches is rather limited for three reasons. First, these approaches are normative in the sense that they evaluate the legitimacy of private governance arrangements according to certain pre-determined criteria. As a consequence, they hardly inform us about the different ways legitimacy might actually come about. Second, these approaches are rather state-oriented, as they are derived from formal democratic requirements attached to governments. Private governance arrangements, however, differ essentially from traditional state regulation and therefore face different legitimacy challenges. Third, evaluating arrangements on 'rigid' criteria presents a static approach which does not allow for an analysis of the processes through which standards become accepted as an authoritative norm in their issue field.

Therefore, this dissertation suggests an additional approach, which conceptualizes legitimacy as a relational and relative concept, rather than a normative yardstick to assess private governance arrangements.

Consequently, this dissertation posed the following research question:

How can processes of legitimization in private governance arrangements be analyzed and explained?

The dissertation aspired to answer this question by means of four individual empirical analyses, which each shed light on a different aspect of processes of legitimization. These analyses focused on so-called Roundtables, which are an important category of private governance arrangement in sustainable agriculture. Two front-running arrangements were analyzed in particular: the Roundtable on Sustainable Palm Oil (RSPO) and the Roundtable on Responsible Soy (RTRS). These two arrangements were studied – either in comparison or as an individual object of analysis – using qualitative research methods allowing for in-depth analyses of different dimensions of their processes of legitimization.

This concluding chapter first takes stock of the empirical chapters and gives an overview of the specific approaches that were taken in the dissertation towards the study of legitimacy (section 6.2). The subsequent section (6.3) provides an enhanced conceptualization of the legitimization processes of private governance arrangements. Sections 6.4 to 6.6 elaborate on the contribution of the dissertation to the three academic debates regarding private governance that were presented in the introductory chapter. The first debate concerns the issue of certification as an important governance instrument of Roundtables. The section thereafter (6.5) discusses the democratic potential of Roundtables. Section 6.6 reflects on the findings on a more abstract level, and discusses the division of public and private responsibilities for sustainable agriculture. The chapter ends with a reflection on the future of Roundtables and considers three scenarios on how the division of responsibilities for sustainable agriculture between public and private actors could play out in the future.

6.2 A variety of approaches towards analyzing processes of legitimization

In this dissertation legitimacy is conceptualized as a relational and relative concept, taking shape in social processes, rather than being operationalized as an evaluative framework. Legitimacy is a *relational* concept in the sense that it develops through the relationship

between a governance arrangement and its relevant audiences. Legitimacy is a *relative* concept in the sense that the criteria of legitimacy change over different historical and societal contexts. In this conceptualization legitimacy is not a static concept, since it can be granted and withdrawn by several distinct audiences, while at the same time legitimacy demands can change. Therefore, it is conceived as constituted in a social process where phases of legitimization and de-legitimization can occur consecutively or in parallel.

The empirical chapters each applied this overall approach in a specific way. *Chapter 2* analyzed the practices through which legitimacy is created by looking at the interactions between the actors in Roundtables and the institutional context in which these interactions take place. The interactions between the partners in the arrangements were taken as the key unit of analysis. By using an inductive approach, two levels of explanations for the specific development of legitimization processes were derived. The first level of explanation is actor-based, while the second level refers to institutional factors that provide opportunities and constraints for legitimate interactions to develop. The analysis revealed several characteristics of possible legitimization problems and their implications for the application of the Roundtable model in other agricultural sectors.

Chapter 3 conceptualized processes of legitimization as multi-dimensional processes of social interaction based on three perspectives in the literature, which have their roots in different scientific traditions: law, political philosophy, and sociology/political science. These approaches are taken up as specific aspects, which are assumed to be important in the process of creating legitimacy. The first approach assumes that legality is important and studies the rules which direct actors' interactions. The second approach emphasizes the moral underpinnings of the interactions and the activities that are the result thereof. The third approach assumes that consent and acceptance of the results of the interactions among different internal and external audiences are vital. The chapter draws on these three perspectives to explain the legitimization process of the RSPO, and shows that all three aspects of legitimacy are important for the legitimization process of a Roundtable.

This dissertation does not exclusively focus on democratic types of legitimacy. However, Roundtables and other private multi-stakeholder initiatives often present themselves as having a deliberative democratic structure in order to strengthen their legitimization processes. Therefore, *Chapter 4* empirically assessed the democratic potential of Roundtables by studying their deliberative capacity. Deliberative capacity is analyzed in this chapter by scrutinizing to what extent the communicative processes in Roundtables are inclusive, consequential and authentic. From this analysis it becomes apparent that there is

a mismatch between the legitimization processes which these Roundtables want to present to the outside world and the actual practices that constitute these processes of legitimization.

Chapter 5 starts from the observation that Roundtables do not operate in isolation of other governance arrangements and that their legitimization processes are affected by interactions with outside actors. The chapter analyzes the interactions of Roundtables with a public regulatory strategy of the European Union: the Renewable Energy Directive. This analysis focuses on the implications of these interactions on legitimization processes of Roundtables in terms of two related processes: internal legitimization and external legitimization, referring to different audiences that can grant legitimacy. The interaction between these two modes of governance triggers a competition between divergent processes of legitimization. In doing so, this competition unintentionally seems to decrease the overall governance capacity in the issue field of biofuels.

6.3 Conceptualizing processes of legitimization in Roundtables

Legitimacy is constituted in interactive processes. These interactive processes take place both within the private governance arrangement itself and with outside actors that have a stake in the issue field which the arrangement aims to govern. Studying processes of legitimization has proven to be a fruitful approach, providing new insights in how legitimacy in private governance arrangements might develop. The empirical chapters of this dissertation identified a range of factors that influence the development of these processes, including trust, collaborative advantage, the structure of the commodity chain, the type of lead firms in the commodity chain, public regulatory strategies, the political embedding of NGOs in production countries, legality, consent, transparency, inclusion of stakeholders, acceptance by society, etc. Studying these processes and the contributions of these factors has shown that legitimacy is not an all or nothing affair. Throughout this dissertation several tensions between different factors contributing to a legitimization processes were identified. Therefore, processes of legitimization can be viewed as delicate balancing acts, as the different dimensions of the concept of legitimacy are often competing with each other. This section seeks to theorize on these findings, and further conceptualize legitimization processes of Roundtables.

Factors influencing legitimization processes can broadly be categorized as internal or external and as procedural or substantial. These dimensions seem to define the field within

which most tensions regarding legitimization processes arise. Tensions between internal and external legitimization processes refer to the relational dimension of the concept of legitimacy. These tensions occur because different audiences base their evaluation of private governance arrangements on different norms for what legitimate and prudent governance should be. On the one hand, different internal audiences may have divergent legitimacy demands. In both the RSPO and RTRS tensions between producers and NGOs became visible. On the other hand, external audiences are also not homogeneous in their demands. Many different external stakeholder groups influence the legitimization process of a Roundtable: campaigning NGOs, local communities, governments, international organizations, etc., which all place different legitimacy demands on Roundtables. However, as the case studies of the RSPO and RTRS show, the main tensions result from differences in legitimacy demands made by internal and external audiences, which often have differing views on sustainable agriculture and prudent governance. Roundtables, therefore, have to find a balance between these at times conflicting demands. If this is not the case, counter reactions are likely to develop which jeopardize the legitimization process of the arrangement as well as the credibility of individual Roundtable members. Companies are vulnerable to reputational damage by campaigning external NGOs, but negative campaigns pose a risk to internal NGOs as well. As we have seen, NGO members of the RTRS were attacked by external NGOs and accused of contributing to 'greenwashing', which has severely compromised their credibility as international NGOs. Internal and external legitimization processes are related to each other. When problems occur in external legitimization processes this may have consequences for the ways internal audiences grant or withhold legitimacy and vice versa. External and internal legitimization processes have an explicit time dimension, since the perceptions and demands of different audiences can change over time.

Tensions between substantial and procedural aspects of legitimization refer to the relative dimension of the concept of legitimacy. Both procedural and substantial aspects are used by private governance arrangements as sources of legitimacy. However, these two aspects of a legitimization process can also result in tensions for Roundtables. For example, including a large variety of stakeholders and basing decisions on consensus are crucial for the legality of Roundtables and contribute to procedural legitimacy. However, in the RSPO as well as in the RTRS this inclusive strategy generated various compromises in the moral justifications underlying sustainability standards. These compromises resulted in a less strict standard which might lead to a decline in substantial legitimacy. Moreover, inclusion is restricted to certain substantive discourses. Procedural and substantial aspects of a

legitimization process resonate with the concepts of input and output legitimacy. However, here these concepts are not used as static criteria to evaluate Roundtables, but rather to understand processes of legitimization and their dynamic character.

Both types of tensions present dilemmas to Roundtables. In order to deal with these dilemmas Roundtables change their practices constantly. These changing practices, in turn, generate new tensions and dynamics in their legitimization processes. Contentious issues are sometimes left out to enhance internal legitimacy at the risk of losing external legitimacy. If this latter risk becomes too high, the Roundtables include these issues for the sake of consensus and with the risk of stakeholders leaving the Roundtables process. In other words, at the cost of procedural legitimacy, they sometimes try to enhance their substantial legitimacy. Since the exit of members is also a threat to the legitimization process of a Roundtable, sometimes problems are solved outside of the Roundtable process. This allows the sanctioning of nonconforming behavior, while at the same time keeping all partners in the process and securing internal legitimacy. Taking a more practice-based approach towards studying legitimization processes of private governance provides new insights in how legitimacy in private governance arrangements might be built.

6.4 The instrument of certification

The introductory chapter of this dissertation showed that the effectiveness of private certification as an instrument to adequately address sustainability issues is highly debated in the literature. Some authors see this form of private regulation as an important tool to make commodity chains more sustainable, while others view this kind of regulation as being ineffective to address sustainability challenges.

Certification can be conceptualized as an attempt to enhance processes of legitimization by ensuring a commodity is produced according to certain principles and criteria captured in a standard. Roundtables do this by disclosing information regarding the sustainability of agricultural production processes. To further enhance the legitimization process of a Roundtable, standards are generally developed in multi-stakeholder processes, which are informed by public consultations open to internal and external stakeholders. The processes by which such standards are developed are rather transparent and much information regarding these processes is publicly available. However, Roundtables run the risk of generating misinformation if the sustainability standards or the auditing processes

are not appropriate. This risk poses a major threat to the legitimization processes of Roundtables. External audiences can use the information provided to challenge the legitimization processes of Roundtables and their members. Disclosed information generated by certification seems to make companies more vulnerable to public scrutiny. In several cases, NGOs checked whether the information provided by the auditors was indeed correct. In case of the RSPO, Greenpeace proved that in some cases it was not. They used this information to name and shame individual companies, thereby challenging the legitimization process of the individual companies as well as the legitimization process of the RSPO.

Private certification is a voluntary instrument; therefore, stakeholders will only participate in developing standards and obtain certification if they see a potential benefit for themselves. This can create tensions between the stringency of the standard and the willingness to participate, which are both important sources of legitimacy. Problems of legitimization indeed arise from perceptions regarding costs and benefits of collaboration. For relevant stakeholders to become and to remain involved in the process their expectations and perceptions of collaborative advantages must be positive. For businesses this relates mainly to reducing negative publicity, gaining access to new markets or securing supply, while for NGOs this largely refers to expanding their moral influence on sustainable development issues. In the case of the RSPO and RTRS, especially producers felt that they had to bear most of the costs of the partnering process, as Roundtables focus on certification on production level, instead of looking at and certifying all stages of the commodity chain. The consequences of this supposedly unfair distribution of costs and benefits become especially visible in the implementation phase of the private regulation. In that phase stakeholders experience whether they really gain more by complying with the standard than by continuing with 'business as usual'. The analyzed Roundtables are currently unable to get the majority of their members to comply with the standards, let alone the majority of the whole industry. Roundtables are not able to severely sanction member behavior to force them to comply with the established regulation. As long as 'business as usual' is allowed, it will be extremely difficult (or at least take a long time) for these Roundtables to change a whole market. Moreover, as participation is voluntary, there are no legal instruments stopping business actors from exiting the Roundtables and opting for less stringent standards developed by public authorities or by other private governance arrangements. This trend towards less stringent standards has already become visible in the biofuel sector.

6.5 Democratic potential of private governance arrangements

As sketched in the introductory chapter, the democratic potential of private governance arrangements is also a highly debated issue. One interpretation regards these arrangements as part of the 'deliberative turn' in environmental governance. On the other hand, many scholars have criticized the democratic potential of private multi-stakeholder arrangements. Although private governance arrangements like Roundtables make use of democratic principles as a source of legitimacy, they refer to a different type of democracy than most liberal democratic states. Private governance arrangements refer more to deliberative types of democracy, while democratic nation states mostly refer to constitutional forms of democracy. Therefore, private governance arrangements also rely on different sources underlying their process of legitimization.

First, Roundtables present themselves as inclusive arrangements that aim to involve a wide range of actors from the commodity chain plus developmental and environmental NGOs. However, while these private arrangements embrace a wide variety of actors, only a limited variety of discourses are in fact included. Included discourses present reformist views on sustainable development that promote market approaches to sustainable development. Reformist approaches to sustainable development focus on the development of technology and institutional reform as opposed to radical approaches to sustainable development which argue for fundamental value and behavioral change. Therefore, Roundtables are not likely to induce radical transformation of global economic structures and agricultural production systems. Consequently, several groups of actors exclude themselves from Roundtable processes, since they do not perceive the Roundtables as platforms to further their goals. The functioning of Roundtables therefore seems to conflict with some of the basic ideals of deliberative democracy, which might threaten the legitimization process of a Roundtable. Having multiple stakeholders at the table does not necessarily fulfill the criteria of inclusion, especially at the level of discourses.

A second deliberative democratic principle that Roundtables associate themselves with is decision-making by consensus. At times it is problematic to align different views on sustainable development in order to reach agreement about the way in which the industry will be governed. It is fundamental for a legitimization process that stakeholders come to a common problem definition and an accompanying rule system. Although this was a difficult process in both analyzed cases, the Roundtables have managed to formulate their sustainability standards by taking on a pragmatic approach; framing solutions in non-

challenging ways; and sometime leaving contentious issues out of the discussions. However, reaching consensus is not always possible, certainly not when the credibility of the arrangement as a whole is at stake. In some cases majority voting and accepting the exit of certain stakeholders is the chosen action strategy.

Third, democratic principles are highly institutionalized in Roundtables as they greatly rely on formal rules regarding rights, duties, and expectations of the arrangement and their members. However, in practice Roundtables do not necessarily adhere to these principles. While the RSPO has been able to develop widely accepted rules of power concerning representation, participation, neutrality and procedural regularity, the implementation of these rules has proven to be difficult at times. The equal representation of stakeholders is still problematic. While on paper all elements of legality have been established, they sometimes fail when there are conflicts between powerful actors in the Roundtable. Since the resignation of important stakeholders is also a threat to the legitimization process of the arrangement, conflicts are sometimes solved outside of the Roundtable to avoid jeopardizing the overall Roundtable process. For example, in 2009 Unilever, holding the presidency of the RSPO, announced that they were suspending future purchases from palm oil supplier PT SMART. This act followed the publication of two reports by Greenpeace, making allegations that the some of the supplier's plantations were responsible for destroying areas of high conservation value. Unilever took action outside of the RSPO framework and PT SMART remained an active member of the RSPO participating in several working groups. This strategy allows the sanctioning of nonconforming behavior, while at the same time keeping all partners in the process.

Fourth, the democratic potential of private arrangements is interesting in relation to public regulatory strategies. The analysis of the interactions of Roundtables and other private multi-stakeholder arrangements with the EU on biofuels revealed that deliberative democratic principles are not necessarily valued or rewarded by public agencies. Indeed, public agencies can erode the democratic potential of individual private governance arrangements and of the private governance system as a whole. The following section takes a closer look at the shifting relationships between public and private actors and elaborates on some of the problems that arise as a result of this shift.

6.6 Division of public and private responsibilities

Public and private are relational concepts: the meaning of the one depends on the other. Furthermore, these concepts are not fixed but are constantly and gradually changing. Roundtables confirm the recent shift which sees actors from the private domain assume responsibilities for public issues, including sustainability. The consequences of this shift for the liberal-democratic order are widely debated. On the one hand this paradigm shift in the division of public and private responsibilities raises many positive expectations of the contribution of private governance arrangements to sustainable development by increasing the social and environmental performance of companies and by overcoming the inadequacies of state action. On the other hand, many scholars observe this shift with criticism and suggest that the inclusion of private actors in governance processes is problematic because some groups have privileged access, collaborations may be focused on selective topics and discourses, and power asymmetries might result in the colonization of the arrangements by market actors. The concept of legitimacy provides a helpful lens to make sense of this shift.

First, an important moral justification underlying the legitimization processes of Roundtables is the norm that private actors should and are able to assume responsibilities for public issues. Within Roundtables there is broad consensus that these arrangements are the right platforms to govern an issue field, because they represent a set of interconnected stakes. Individual justifications to take part in Roundtables differ for each participant and are, for a large part, based on self-interest. NGOs within Roundtables aim to pursue developmental and/or environmental goals, while companies are concerned with increasing their reputation, securing their long-term supply of a commodity, or connecting to new markets.

Second, to strengthen their legitimization processes, private arrangements mimic public structures by creating functional equivalents of public rules of power as a legitimization strategy. However, public and private actors still depend on different sources to sustain their processes of legitimization. Public regulatory strategies are often built on constitutional forms of democracy, while Roundtables refer to deliberative forms of democracy. Furthermore, public policy's legitimacy originates from representation, formalized procedures of implementation, effectiveness, and accountability vis-à-vis a distinct politico-geographical constituency. In contrast, multi-stakeholder private governance arrangements build their legitimacy on the consensus of a wide-ranging group

of stakeholders with different interests and expertise, transparent rule making, and shared responsibility.

Third, although Roundtables do not formally include state actors in their decision-making processes, they support state-based legal systems by stating in their Principles and Criteria that companies have to comply with all applicable local, national and international laws. Hence, they draw on state legitimacy, and are thus embedded in and partially depended on public regulatory strategies. Moreover, public and private actors are in a constant process of interaction. Private arrangements have multiple simultaneous relationships with governments and other public agencies. Such public-private interactions are often assumed to strengthen private governance arrangements. In terms of funding, this may well be the case as a number of European governments provide financial support to these arrangements. However, the dissertation shows that governmental regulation can also have a detrimental effect by eroding the legitimization process of a particular private arrangement or of the governance system as a whole.

6.7 Reflection on the future of Roundtables as private governance arrangements

Roundtables and other private governance arrangements on sustainability issues are quite recent phenomena, with their establishment, institutionalization, and acknowledgment still under way. Therefore, norms and demands for their legitimization are still in the making. In fact, many different actors currently try to create their own legitimization process in governing issues related to sustainable development. In particular, this touches upon the shifting division of responsibilities between actors from the public and private spheres for sustainability in the agricultural sector. How this division of responsibilities might play out is now described – without any forecasting ambition – in three scenarios which are based on the findings of this dissertation.

The first scenario anticipates an increasingly accelerated institutionalization of private governance arrangements as important regulators for sustainable agriculture. In this scenario public authorities will hand over more responsibilities for sustainable agricultural commodity chains to businesses and NGOs. This trend is currently visible, albeit mainly in European countries which approach sustainable tropical commodities from a demand-side perspective. Their public authorities cannot directly address producers with their regulation, since production is not taking place within their territorial boundaries and

trade relations restrict them. Therefore, they tend to hand over the responsibility for sustainable production to private actors. Two main strategies of how public authorities are able to exert influence beyond their territorial boundaries can be observed. Firstly, they can engage with, support or even initiate market-based governance arrangements. For instance, the Dutch government initiated and to a large part funds the Sustainable Trade Initiative (IDH, Dutch for *Initiatief Duurzame Handel*), which focuses on market solutions to issues of sustainable production and consumption. Several Roundtables, including the RSPO and RTRS, are part of the IDH's portfolio of supported initiatives. Other European governments also fund several Roundtables and private governance arrangements as part of their sustainability strategy. Secondly, governments can assign (part of) the implementation of public regulation to private governance arrangements. As discussed in Chapter 5 of the dissertation, the European Union hands over certain implementation tasks of their Renewable Energy Directive to accredited private governance arrangements.

This scenario has several strengths and weaknesses in terms of the possibilities to create a legitimate governance system for sustainable agriculture. On the one hand, this scenario is promising as it presents a continuing institutionalization of sustainable development in the private sector. Next to business actors, also (international) NGOs play a prominent role in defining the terms of sustainable agriculture. Companies may further be able to assume responsibilities for sustainable production and consumption and further internalize environmental and social costs of agricultural production. On the other hand, it is unlikely that the private sector can solve the severe sustainability problems associated with agricultural production and consumption. Roundtables and other private governance arrangements typically try to control and manage sustainability issues. Sustainable development, however, is an increasingly complex and 'wicked' issue area. In order to try and tame these wicked issues, Roundtables and other private governance arrangements tend to place strict discursive and regulatory boundaries to define and demarcate issues. It is unlikely that this approach is able to adequately tackle these complex issues, which do not keep strict boundaries, but rather involve different sectors, levels and spheres. Although Roundtables present sophisticated governance arrangements, it is extremely challenging to regulate a whole sector in the context of a 'free' market. As long as there are markets that do not demand certified products, problems of unsustainable production will continue to exist and the strategy of tying sustainable production to certification will fall short. Moreover, in this scenario national sovereignty is a neglected concept. Roundtables are mostly Western initiatives and are largely based on Western ideologies and can

therefore be conceived by some audiences as neo-colonialist attempts to exert influence in developing countries.

The second scenario is one in which national sovereignty plays a key role. This scenario anticipates that national governments (re-)take their role as central actors in regulating sustainable agriculture, presumably at the detriment of private governance arrangements. National governments would then design and implement certification programs themselves. In contrast to private certification programs, certification programs from the public sphere would be mandatory. Currently, such developments can indeed be observed in producing countries. For example, both the Indonesian and Malaysian governments are formulating their own standards for sustainable palm oil and have reduced their relations with the RSPO. The Indonesian government has recently launched the Indonesian Sustainable Palm Oil (ISPO) standard, and the Malaysian government is working on a certification scheme called Malaysian Sustainable Palm Oil (MSPO). ISPO regulation is mandatory and aims to ensure that all Indonesian palm oil complies with public laws and regulations.

This second scenario also has several strengths and weaknesses in terms of the possibilities to create a legitimate governance system for sustainable agriculture. On the one hand, this scenario is promising, since sustainable agriculture is not dependent on market dynamics, but is enforced by means of mandatory regulation. Because this regulation is mandatory, it can potentially transform a whole sector within a specific territory. Moreover, it is promising that sustainable production in this scenario is not only on the agenda of consuming countries, but also on the agenda of Southern production countries. On the other hand, it is not clear what this regulation will actually look like and if it really has the potential to transform the agricultural sector. Implementation and enforcement of public certification can be problematic in states that have weak administrative structures and are afflicted by corruption. It is therefore difficult to assess whether these public certification schemes would be more effective or more legitimate than the recently emerged private ones discussed in this dissertation.

The third scenario anticipates a crucial role for meta-governance arrangements. In this scenario, actors from either the public or the private sphere may assume a more prominent position in regulating sustainable agriculture by taking on a meta-governance role. This could entail harmonization of different certifying arrangements, whether private or public, such that they can exist in parallel without hindering one another. Currently, we see that several intergovernmental agencies are looking into those options. The United Nations

Forum on Sustainability Standards (UNFSS) has the potential to become a prominent one. The UNFSS is open to all UN member states, but particularly tries to involve developing countries and will initially focus on agri-food standards. The steering committee consists of five UN agencies: the Food and Agriculture Organization (FAO), the UN Conference on Trade and Development (UNCTAD), the UN Environment Programme (UNEP), the UN Industrial Development Organization (UNIDO), and the International Trade Centre (ITC). The overall goal of the UNFSS is to make private sustainability standards a driver to sustainable development in developing countries instead of an obstacle; for example, by excluding smallholders from international trade. They want to achieve this by actively engaging developing countries in international dialogues on private standards. A similar meta-governance initiative, albeit from the private sphere is ISEAL. Sustainability standards can become members of the ISEAL alliance when they comply with ISEAL's Code of Good Practice. By becoming a member, sustainability standards commit to principles regarding inclusion, transparency, accountable decision-making processes, and assurance mechanisms.

This scenario also has its own strengths and weaknesses in terms of the possibilities to create a legitimate governance system for sustainable agriculture. Meta-governance approaches by intergovernmental organizations or by private arrangements might present a favorable future pathway by overcoming some of the limitations of individual private governance approaches. Moreover, producing countries in the tropics seem to increasingly reclaim regulatory power, while consuming countries seem to mitigate their sustainability impacts by supporting private governance arrangements. This might lead to increasing tensions between Western and Southern approaches to sustainable development. Hence, an integrated approach on a global level towards sustainable agriculture seems promising. Also, these meta-governance attempts can potentially contribute to the credibility of standards. This might therefore enhance legitimization processes of private governance arrangements like Roundtables. However, the UN and its organizations have so far only focused on procedural issues in their meta-governance role. It is unlikely that they will also take up substantial aspects of sustainable consumption and production, because it will probably be extremely difficult to reach agreement on these substantial issues within the UN framework. The ISEAL alliance also focuses on procedural rather than substantial aspects of sustainability standards. It remains to be seen if these meta-governance arrangements will have the power and mandate to adequately play a dominant role in this issue field.

These three scenarios are not independent, but build on each other, as current tentative developments show. Elements of scenario 2 have started materializing as a reaction to emergent elements of scenario 1. Scenario 3 seems to develop as an attempt to regulate scenario 1 and 2. Since there is evidence for all three scenarios evolving concurrently, albeit advocated by different protagonists and originating from different regions and policy levels, it is impossible to predict which scenario will be dominant and how this affects the development of the other two scenarios. All scenarios also exhibit several weaknesses, so the question is perhaps not so much “which scenario is the best one”, but rather “how to utilize their respective strengths”? A strategic combination of the three scenarios may provide a promising future pathway to overcome their individual limitations, and to create a more legitimate governance system for the regulation of sustainable agricultural commodities. This clearly goes beyond what purely private or public initiatives are able to achieve, and requires orchestrated efforts across the public-private divide, transcending national boundaries and overcoming the production-consumption dichotomy.

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Appendix

Interviews Chapter 2

N	RT	Interviewee	Member Category	Type and Date
1.	RSPO	Former Ethical Policy Manager, The Body Shop	EB member Retailers	Telephone interview March 30, 2009
2.	RSPO	Senior policy advisor, Oxfam-Novib	EB member Social or Development Organizations (NGOs)	Interview March 30, 2009
3.	RSPO	Consultant & Facilitator,	Facilitator	Interview April 3, 2009.
4.	RTRS	Associate Director, ProForest	Facilitator	Telephone interview April 6, 2009
5.	RTRS	Outreach Manager		Telephone interview April 7, 2009
6.	RSPO	Head of Food & Agribusiness Strategic Advisory & Research for South-East Asia, Rabobank	EB member Banks & Investors	Telephone interview April 8, 2009
7.	RSPO	Global Sustainability Director, IOI Group	EB member Palm Oil Processors & Traders	Interview April 10, 2009
8.	RTRS	Director of <i>consumer policy</i> , Coop Switzerland.	EB member Industry, Finance & Trade	Telephone interview April 14, 2009
9.	RSPO	Environmental Risk Manager, HSBC Malaysia	Banks & Investors	Telephone interview April 14, 2009

10.	RSPO	Ex-chairman, Malaysian Palm Oil Association	EB member Oil Palm Growers	Telephone interview April 17, 2009
11.	RTRS	Regional Expertise Centre Director (Argentina), Solidaridad	President Civil Society	Telephone interview April 20, 2009
12.	RSPO	Director, ProForest	Facilitator	Telephone interview April 21, 2009
13.		Independent International Trade & Development Professional		Telephone interview May 8, 2009
14.	RTRS	Senior Vice President Market Transformation, WWF	Civil Society	Telephone interview May 8, 2009
15.	RSPO	Head of Forest Conversion Initiative, WWF Switzerland	EB member Environmental or Nature Conservation Organizations (NGOs)	Telephone interview May 11, 2009
16.	RTRS	Purchasing Manager, Nutreco.	EB member Industry, Finance & Trade	Telephone Interview May 20, 2009
17.	RTRS	Executive director, Fundapaz	EB member Civil Society	Telephone interview May 30, 2009
18.	RSPO	Manager Marketing Refined Oils Europe, Cargill BV	Palm Oil Processors & Traders	Interview June 9, 2009.
19.	RSPO RTRS	Manager Sustainable Production, Product Board Margarine, Fats & Oils (MVO)	Palm Oil Processors & Traders Industry, Finance & Trade	Telephone interview June 11, 2009
20.	RSPO	Deputy Director, Both ENDS	Social or Development Organizations (NGOs)	Telephone Interview July 23, 2009
21.	RSPO	Director Product Integrity, Ahold	Retailers	Interview July 28, 2009
22.	RSPO	Head of Program & Strategy, Wetlands International	Environmental or Nature Conservation Organizations (NGOs)	Telephone Interview August 17, 2009

23.	RSPO	Head of Food & Agribusiness Strategic Advisory & Research for South-East Asia, Rabobank	EB member Banks & Investors	Telephone Interview August 18, 2009
24.	RSPO	Global Supply Chain Director of Sustainable Agriculture, Unilever.	President Consumer Goods Manufacturers	Interview August 25, 2009
25.	RSPO RTRS	Manager Sustainable Production at Product Board Margarine, Fats & Oils (MVO).	Palm Oil Processors & Traders Industry, Finance & Trade	Interview August 28, 2009
26.	RSPO	Ex-chairman, Malaysian Palm Oil Association	EB member Oil Palm Growers	Telephone interview September, 2009
27.		Campaigner biofuels, biomass & palm oil, Friends of the Earth Netherlands		Interview September 2, 2009
28.		Forest campaign leader in Indonesia, Greenpeace		Telephone interview September 17, 2009
29.	RSPO RTRS	Global Supply Chain Director of Sustainable Agriculture, Unilever	President EB member Consumer Goods Manufacturers Industry Finance & Trade	Phone Interview February, 2009
30.	RSPO RTRS	Global Supply Chain Director of Sustainable Agriculture, Unilever	President EB member Consumer Goods Manufacturers Industry Finance & Trade	Several interviews & personal communications, March-August, 2009
31.	RTRS	Corporate Affairs Director, Bunge Brazil. President, ABIOVE	EB member	Personal Communications, March-August, 2009

32.	RTRS	Program Officer Sustainable Soy, Solidaridad	Civil Society	Informal interview, October 17, 2011
33.	RSPO	Director, Forest Peoples Program		Phone Interview, October 26, 2011
34.	RSPO	Ex-chairman, Malaysian Palm Oil Association	EB member Oil Palm Growers	Phone Interview, November 8, 2011
35.	RSPO	Conservation Manager, PT REA	Oil Palm Growers	Informal Interview, November 23, 2011
36.	RTRS	Outreach Manager		Personal Communications, January, 2012

Note. Interviews #1-24 were conducted by Jordan Nikoloyuk, interviews 25-36 were conducted by Greetje Schouten

Interviews Chapter 3

Interviewee	RSPO member category	Type and Date	Conducted by
1. Former Ethical Policy Manager, The Body Shop	Former Executive Board member RSPO	Telephone interview March 30, 2009	Jordan Nikoloyuk
	Retailers		
2. Senior policy advisor, Oxfam-Novib	Executive Board member RSPO	Interview March 30, 2009	Jordan Nikoloyuk
	Social or Development Organizations (NGOs)		
3. Consultant and Facilitator, RSPO.	Facilitator	Interview April 3, 2009.	Jordan Nikoloyuk
4. Head of Food & Agribusiness Strategic Advisory & Research for South-East Asia, Rabobank	Executive Board member RSPO	Telephone interview April 8, 2009	Jordan Nikoloyuk
	Banks and Investors		
5. Global Sustainability Director, IOI Group	Executive Board member RSPO.	Interview April 10, 2009	Jordan Nikoloyuk
	Palm Oil Processors and Traders		
6. Environmental Risk Manager, HSBC Malaysia	Banks and Investors	Telephone interview April 14, 2009	Jordan Nikoloyuk
7. Ex-chairman, Malaysian Palm Oil Association	Former Executive Board member RSPO	Telephone interview April 17, 2009	Jordan Nikoloyuk
	Oil Palm Growers		
8. Director, ProForest	Facilitator RSPO.	Telephone interview April 21, 2009	Jordan Nikoloyuk
9. Head of Forest Conversion Initiative, WWF Switzerland	Former Executive Board member RSPO.	Telephone interview May 11, 2009	Jordan Nikoloyuk
	Environmental or Nature Conservation Organisations (NGOs)		
10. Manager Marketing Refined Oils Europe, Cargill BV	Palm Oil Processors and Traders	Interview June 9, 2009.	Jordan Nikoloyuk
11. Manager Sustainable Production, Product Board Margarine, Fats and Oils (MVO)	Palm Oil Processors and Traders	Telephone interview June 11, 2009	Jordan Nikoloyuk
12. Deputy Director, Both ENDS	Social or Development Organisations (NGOs)	Telephone Interview July 23, 2009	Greetje Schouten
13. Director Product Integrity, Ahold	Retailers	Interview July 28, 2009	Greetje Schouten

14.	Head of Programme and Strategy, Wetlands International	Environmental or Nature Conservation Organisations (NGOs)	Telephone Interview August 17, 2009	Greetje Schouten
15.	Head of Food & Agribusiness Strategic Advisory & Research for South-East Asia, Rabobank	Executive Board member RSPO Banks and Investors	Telephone Interview August 18, 2009	Greetje Schouten
16.	Global Supply Chain Director of Sustainable Agriculture, Unilever.	President RSPO Consumer Goods Manufacturers	Interview August 25, 2009	Greetje Schouten
17.	Manager Sustainable Production at Product Board Margarine, Fats and Oils (MVO).	Palm Oil Processors and Traders	Interview August 28, 2009	Greetje Schouten
18.	Ex-chairman, Malaysian Palm Oil Association	Former Executive Board member RSPO Oil Palm Growers	Telephone interview September, 2009	Greetje Schouten
19.	Campaigner biofuels, biomass and palm oil, Friends of the Earth Netherlands		Interview September 2, 2009	Greetje Schouten
20.	Forest campaign leader in Indonesia, Greenpeace		Telephone interview September 17, 2009	Greetje Schouten
21.	Global Supply Chain Director of Sustainable Agriculture, Unilever	President RSPO Consumer Goods Manufacturers	Phone Interview February, 2009	Greetje Schouten
22.	Global Supply Chain Director of Sustainable Agriculture, Unilever	President RSPO Consumer Goods Manufacturers	Several interviews and personal communications, March-August, 2009	Jordan Nikoloyuk Greetje Schouten

Summary

Introduction

Over the past few decades, non-state actors increasingly gained prominence in global governance. Although state actors and intergovernmental institutions still have a central position in international policymaking, new types of private governance arrangements increasingly shape outcomes in global governance. The object of this dissertation is a specific form of private governance arrangement which emerged in the early 2000s in response to sustainability challenges regarding agricultural commodities: the so-called Roundtables. These Roundtables are global multi-stakeholder platforms that aim to promote and steer change of an entire agricultural commodity chain towards a more sustainable direction. Their decision-making processes include business actors from all links in the commodity chain, developmental nongovernmental organizations (NGOs) and environmental NGOs, while state actors are formally excluded from these processes. Roundtables use certification as the main instrument for ensuring compliance with their standards.

The proliferation of private actors in governing issues regarding sustainable development has given rise to extensive academic and political debates. A first debate regards the shifting division of responsibilities between public and private actors. On the one hand this paradigm shift raises positive expectations of the contribution of private governance arrangements to sustainable development by increasing the social and environmental performance of companies and by overcoming the inadequacies of state action. On the other hand, many scholars suggest that the inclusion of private actors in governance processes is problematic because some groups have privileged access, collaborations may be focused on selective topics and discourses, and power asymmetries might result in the colonization of the arrangements by market actors. A second debate regards the democratic potential of private governance arrangements. On the one hand, a large group of scholars regards these arrangements as part of the 'deliberative turn' in environmental governance as they include a wide range of actors beyond the state in decision-making processes. On the other hand, many scholars have criticized the democratic potential of private multi-stakeholder arrangements, since the private actors included in these arrangements are not elected according to democratic procedures, but rather selected themselves to take action. A third debate regards the effectiveness of private certification as

an instrument to adequately address sustainability issues. Some authors see this form of private regulation as an important tool to make commodity chains more sustainable, while others view this kind of regulation as being ineffective to address sustainability challenges.

All three debates are related to what constitutes legitimate private governance. To be able to contribute to these debates, this dissertation therefore analyzes issues of legitimacy related to private governance arrangements. The vast majority of the academic literature focuses on democratic legitimacy related to private governance and uses a specific conception of legitimacy which makes the distinction between input and output legitimacy. The scope of such approaches is rather limited for three reasons. First, these approaches are normative as they evaluate the legitimacy of private governance arrangements according to certain pre-determined criteria. As a consequence, they hardly inform us about the different ways legitimacy might actually come about. Second, these approaches are rather state-oriented, as they are derived from formal democratic requirements attached to governments. Private governance arrangements, however, differ essentially from traditional state regulation and therefore face different legitimacy challenges. Third, evaluating arrangements on 'rigid' criteria presents a static approach which does not allow for an analysis of the processes through which standards become accepted as an authoritative norm in their issue field. Therefore, this dissertation suggests an additional approach, which conceptualizes legitimacy as a relational and relative concept, rather than a normative yardstick to assess private governance arrangements. Legitimacy is a *relational* concept in the sense that it develops through the relationship between a governance arrangement and its relevant audiences. Legitimacy is a *relative* concept in the sense that the criteria of legitimacy change over different historical and societal contexts. In this conceptualization legitimacy is not a static concept, since it can be granted and withdrawn by several distinct audiences, while at the same time legitimacy demands can change. Therefore, it is conceived as constituted in a social process where phases of legitimization and de-legitimization can occur consecutively or in parallel.

Consequently, this dissertation poses the following research question:

How can processes of legitimization in private governance arrangements be analyzed and explained?

The dissertation aspires to answer this question by means of four individual empirical analyses, which each shed light on a different aspect of processes of legitimization. These analyses focus on two front-running arrangements in particular: the Roundtable on

Sustainable Palm Oil (RSPO) and the Roundtable on Responsible Soy (RTRS). These arrangements are studied using qualitative research methods allowing for in-depth analyses of different dimensions of their processes of legitimization.

Empirical chapters

Chapter 2 aims to better understand the process of creating legitimacy in Roundtables. The legitimization processes of both the RSPO and RTRS are analyzed. From this analysis explanations for the specific development of such processes are derived. The first level of explanation is actor-based and addresses the factors trust and collaborative advantage. The second level refers to institutional factors that provide opportunities and constraints for legitimate interactions to develop, such as the structure of the commodity chain, the type of lead firms in it and the role of governmental policies. The analysis reveals several characteristics of possible legitimization problems and their implications for the application of this governance model.

Chapter 3 suggests that understanding legitimization processes of private governance initiatives requires a multi-dimensional approach. This suggestion has been operationalized in three aspects that can be used to better understand such processes: legality, moral justifications, and consent/acceptance. These aspects are based on different theoretical traditions and are applied in an analysis of the process of creating legitimacy of the RSPO. This empirical research reveals the characteristics of the legitimization process of the RSPO and shows the value of a multi-dimensional approach. The three perspectives complement each other and deepen our insights into legitimization processes by revealing tensions and trade-offs in the different ways in which private governance arrangements can create legitimacy.

Chapter 4 begins with the observation that the democratic quality of private multi-stakeholder governance is an important subject of academic and political debate. On the one hand, private multi-stakeholder arrangements are seen as a way of democratizing international environmental governance. On the other hand, the democratic potential of these arrangements has been heavily criticized and interpreted as a privatization of what should be public. To nuance this debate, this chapter assesses the democratic potential of Roundtables, which are generally presented as being based on a deliberative democratic rationale. This chapter therefore assesses the deliberative capacity of the RTRS and RSPO and shows to what extent the communicative processes in these Roundtables are inclusive,

consequential and authentic. This chapter concludes that the Roundtable model tends to fall short on two criteria of deliberative democracy: inclusiveness (of actors and discourses) and consequentiality.

Chapter 5 focuses on the interactions of Roundtables with public regulatory strategies and the influence thereof on processes of legitimization. Processes of legitimization are here conceptualized as having an internal and an external dimension. This chapter focuses on biofuels as an arena in which modes of governance interact. In this arena, Roundtables represent newly emerged private modes of governance. The European Union, as a public governance actor par excellence, recently entered the scene with its Renewable Energy Directive (EU-RED) that sets binding targets on renewable energy, e.g. on biofuels' share of the energy mix. The interaction between these two modes of governance triggers a competition between divergent processes of legitimization. In doing so, this competition seems to decrease the overall governance capacity in the issue field of biofuels.

Conclusions and reflections

Based on the findings in the empirical chapters, the concluding chapter provides an enhanced conceptualization of legitimization processes of private governance arrangements.

These processes can be viewed as delicate balancing acts, as the different dimensions of the concept of legitimacy often compete with each other. Factors influencing legitimization processes can broadly be categorized as internal or external and as procedural or substantial. These dimensions seem to define the field within which most tensions regarding legitimization processes arise. Tensions between internal and external legitimization processes refer to the relational dimension of the concept of legitimacy. These tensions occur because different – internal and external – audiences base their evaluation of private governance arrangements on different norms for what legitimate and prudent governance should be. Tensions between substantial and procedural aspects of legitimization refer to the relative dimension of the concept of legitimacy. Both procedural and substantial aspects are used by private governance arrangements as sources of legitimacy. However, these two aspects of a legitimization process can also result in tensions for Roundtables. For example, including a large variety of stakeholders and basing decisions on consensus are crucial for the legality of Roundtables and contribute to procedural legitimacy. However, in both Roundtables this inclusive strategy generated

various compromises resulting in a less strict standard which might lead to a decline in substantial legitimacy.

The concluding chapter elaborates on the contribution of this research endeavor to the three academic debates regarding private governance presented in the introductory chapter. The first debate concerned the issue of certification as an important governance instrument of Roundtables. Firstly, certification can be conceptualized as an attempt to enhance processes of legitimization by ensuring a commodity is produced according to certain principles and criteria captured in a standard. However, Roundtables run the risk of generating misinformation if the sustainability standards or the auditing processes are not appropriate, which poses a major threat to the legitimization processes of Roundtables. Second, since private certification is a voluntary instrument, stakeholders will only participate in developing standards and obtain certification if they see a potential benefit. This can create tensions between the stringency of the standard and the willingness to participate, which are both important sources of legitimacy. Legitimization problems become especially visible in the implementation phase of the Roundtables. Currently, they are unable to get the majority of their members to comply with the standards, let alone the majority of the industry. There are no legal instruments stopping business actors from exiting the Roundtables and opting for less stringent standards developed by public authorities or by other private governance arrangements.

The second debate addressed the democratic potential of Roundtables. First, Roundtables present themselves as inclusive arrangements that aim to involve a wide range of actors. However, while they include a wide range of actors, they include only a limited variety of discourses. Included discourses present reformist views on sustainable development. Reformist approaches to sustainable development focus on the development of technology and institutional reform as opposed to radical approaches to sustainable development which argue for fundamental value and behavioral change. Therefore, Roundtables are not likely to induce radical transformation of global economic structures and agricultural production systems. Consequently, several groups of actors exclude themselves from Roundtable processes. The functioning of Roundtables therefore seems to conflict with some of the basic ideals of deliberative democracy. Second, an important principle for Roundtables is decision-making by consensus. However, reaching consensus is not always possible, certainly not when the credibility of the arrangement as a whole is at stake. In some cases majority voting and accepting the exit of certain stakeholders is the chosen action strategy. Third, democratic principles are highly institutionalized in Roundtables.

However, while they have been able to develop widely accepted rules of power concerning representation, participation, neutrality and procedural regularity, the implementation of these rules has proven to be difficult at times. Especially when there are conflicts between powerful actors in the Roundtable. Since the exit of important stakeholders is a threat to the legitimization process of the arrangement, conflicts are sometimes solved outside of the Roundtable. This strategy allows the sanctioning of nonconforming behavior, while at the same time keeping all partners in the process. Fourth, the democratic potential of private arrangements is interesting in relation to public regulatory strategies. The analysis of the interactions of Roundtables with the EU on biofuels revealed that deliberative democratic principles are not necessarily valued nor rewarded by public agencies. Indeed, public agencies can erode the democratic potential of individual private governance arrangements and of the private governance system as a whole.

The third debate addressed the division of public and private responsibilities for sustainable agriculture. Roundtables confirm the recent shift which sees actors from the private domain assume responsibilities for public issues, including sustainability. First, an important moral justification underlying the legitimization processes of Roundtables is the norm that private actors should and are able to assume responsibilities for public issues. Within Roundtables there is broad consensus that these arrangements are the right platforms to govern an issue field, because they represent a set of interconnected stakes. Second, to strengthen their legitimization processes, private arrangements mimic public structures by creating functional equivalents of public rules of power as a legitimization strategy. However, public regulatory strategies are often built on constitutional forms of democracy, while Roundtables refer to deliberative forms of democracy. Third, although Roundtables do not formally include state actors in their decision-making processes, they support state-based legal systems by stating in their Principles and Criteria that companies have to comply with all applicable local, national and international laws. Hence, they draw on state legitimacy, and are embedded in and partially dependent on public regulatory strategies. Moreover, public and private actors are in a constant process of interaction. Private arrangements have multiple simultaneous relationships with governments and other public agencies. Such public-private interactions are often assumed to strengthen private governance arrangements. However, governmental regulation can also have a detrimental effect by eroding the legitimization process of a particular private arrangement or of the governance system as a whole.

The concluding chapter ends with a reflection on the future of Roundtables and considers three scenarios on how the division of responsibilities for sustainable agriculture between public and private governance could play out in the future. The first scenario anticipates an increasingly accelerated institutionalization of private governance arrangements as important regulators for sustainable agriculture. In this scenario public authorities will hand over more responsibilities for sustainable agricultural commodity chains to businesses and NGOs. This trend is currently visible, albeit mainly in European countries which approach sustainable tropical commodities from a demand-side perspective.

This scenario has several strengths and weaknesses. On the one hand, it presents a continuing institutionalization of sustainable development in the private sector. Next to business actors, NGOs play a prominent role in defining the terms of sustainable agriculture and companies may be able to further internalize environmental and social costs of agricultural production. On the other hand, it is unlikely that the private sector can solve the severe sustainability problems associated with agricultural production and consumption. Roundtables typically try to control and manage sustainability issues and tend to place strict discursive and regulatory boundaries to define and demarcate issues. Sustainable development, however, is an increasingly complex and ‘wicked’ issue area, which does not keep to strict boundaries, but rather involves different sectors, levels and spheres. Although Roundtables present quite sophisticated governance arrangements, it is extremely challenging to regulate a whole sector in the context of a ‘free’ market. As long as there are markets that do not demand certified products, problems of unsustainable production will continue to exist and the strategy of tying sustainable production to certification will fall short. Moreover, in this scenario national sovereignty is a neglected concept.

The second scenario is one in which national sovereignty plays a key role. This scenario anticipates that national governments (re-)take their role as central actors in regulating sustainable agriculture, presumably at the detriment of private governance arrangements. National governments would then design and implement certification programs themselves. In contrast to private certification programs, certification programs from the public sphere would be mandatory. Currently, such developments can indeed be observed in producing countries. Both the Indonesian and Malaysian governments are formulating their own standards for sustainable palm oil and reduced their relations with the RSPO.

This scenario also has several strengths and weaknesses. On the one hand, this scenario is promising, since sustainable agriculture is not dependent on market dynamics, but is

enforced by means of mandatory regulation and can potentially transform a whole sector within a specific territory. Moreover, it is promising that sustainable production in this scenario is not only on the agenda of consuming countries, but also on the agenda of Southern production countries. On the other hand, it is not clear whether this regulation really has the potential to transform the agricultural sector. Implementation and enforcement of public certification can be problematic in states that have weak administrative structures and are afflicted by corruption. It is therefore difficult to assess whether these public certification schemes would be more effective or more legitimate than the recently emerged private ones discussed in this dissertation.

The third scenario anticipates a crucial role for meta-governance arrangements. In this scenario, actors from either the public or the private sphere may play a more prominent part in regulating sustainable agriculture by taking on a meta-governance role. This could entail harmonization of different certifying arrangements, whether private or public, such that they can exist in parallel without hindering one another. Currently, we see that several intergovernmental agencies are looking into those options. The United Nations Forum on Sustainability Standards (UNFSS) has the potential to become a prominent one. A similar meta-governance initiative, albeit from the private sphere is ISEAL.

This scenario also has its strengths and weaknesses. Meta-governance approaches might present a favorable future pathway by overcoming some of the limitations of individual private governance approaches. Moreover, producing countries in the tropics seem to increasingly reclaim regulatory power, while consuming countries seem to mitigate their sustainability impacts by supporting private governance arrangements. Hence, an integrated approach on a global level to overcome this tension seems promising. Also, these meta-governance attempts can potentially contribute to the credibility of standards and enhance their legitimization processes. However, these meta-governance arrangements have so far only focused on procedural issues instead of more substantial aspects of sustainability standards. It remains to be seen if these meta-governance arrangements will have the power and mandate to adequately play a dominant role in this issue field.

Currently, there is evidence for all three scenarios evolving simultaneously, albeit advocated by different protagonists and originating from different regions and policy levels. It is impossible to predict which scenario will become dominant and how this will affect the development of the other scenarios. A strategic combination of the three scenarios may provide a promising future pathway to overcome their individual limitations, and to create a more legitimate governance system for the regulation of

sustainable agricultural commodities. This clearly goes beyond what purely private or public initiatives are able to achieve, and requires orchestrated efforts across the public-private divide, transcending national boundaries and overcoming the production-consumption dichotomy.

Samenvatting

Introductie

In de afgelopen decennia zijn niet-gouvernementele organisaties (NGO's) en bedrijven steeds belangrijker geworden in het vormgeven van mondiale bestuurlijke processen. Hoewel nationale overheden en intergouvernementele organisaties nog steeds een centrale positie hebben in internationale beleidsvorming, hebben nieuwe soorten van private sturingsarrangementen een steeds grotere invloed op de wereldpolitiek. Het onderwerp van dit proefschrift is een specifiek privaat sturingsarrangement dat is ontstaan in het begin van de 21^e eeuw in reactie op duurzaamheidsproblemen met betrekking tot agrarische grondstoffen: de zogenaamde 'Roundtables'. Deze Roundtables zijn mondiale 'multi-stakeholder' platformen met als doel een totale agrarische productketen te verduurzamen. Alle actoren uit de productketen, ontwikkelings- en milieubeschermings-NGO's kunnen deelnemen aan de besluitvormingsprocessen in deze arrangementen. Publieke actoren zijn formeel uitgesloten van deze processen. Het belangrijkste instrument dat Roundtables gebruiken om hun regelgeving te implementeren is productcertificering. Tijdens de laatste tien jaar hebben deze Roundtables zich bewezen als invloedrijke spelers in het besturen van mondiale agrarische productketens.

De groeiende rol van private actoren in bestuurlijke processen die betrekking hebben op duurzame ontwikkeling, heeft aanleiding gegeven tot uitgebreide academische, maatschappelijke en politieke debatten. Een eerste debat gaat over de verschuiving in de verdeling van verantwoordelijkheden tussen publieke en private actoren. Roundtables bevestigen de recente verschuiving waarin actoren uit het private domein verantwoordelijkheden voor publieke kwesties, zoals duurzaamheid, op zich nemen. Aan de ene kant zien we dat deze paradigmaverschuiving reden is voor positieve verwachtingen over de bijdrage van private sturingsarrangementen aan duurzame ontwikkeling door het verhogen van milieu- en sociale prestaties van bedrijven en door tegenwicht te bieden aan de tekortkomingen van overheidshandelen. Aan de andere kant zijn veel onderzoekers zeer kritisch over deze verschuiving en wijzen zij erop dat het opnemen van private actoren in bestuurlijke processen problematisch is, omdat sommige groepen een bevoorrechte positie krijgen en ongelijke machtsverhoudingen kunnen resulteren in de kolonisatie van de arrangementen door marktpartijen. Een tweede debat gaat over het democratisch

potentieel van private sturingsarrangementen. Aan de ene kant ziet een groep wetenschappers deze arrangementen als onderdeel van een 'deliberatieve golf' in het internationaal milieubeleid, omdat er een grote variatie aan actoren deelneemt aan hun besluitvormingsprocessen. Aan de andere kant zijn er veel academici die kritiek hebben op het democratisch potentieel van deze private arrangementen, omdat de participerende actoren niet zijn gekozen op basis van democratische procedures, maar zichzelf hebben geselecteerd om actie te ondernemen. Een derde debat betreft de effectiviteit van private certificering als instrument om duurzaamheidsvraagstukken adequaat aan te pakken. Sommige wetenschappers zien deze vorm van private regulering als een belangrijk instrument om productketens te verduurzamen, terwijl anderen dit soort regelgeving als ineffectief beschouwen om duurzaamheid te adresseren.

Alle drie de debatten zijn gerelateerd aan wat rechtmatig privaats bestuur eigenlijk inhoudt. Om te kunnen bijdragen aan deze debatten, analyseert dit proefschrift legitimiteitsvraagstukken met betrekking tot private sturingsarrangementen. De overgrote meerderheid van de academische literatuur richt zich op democratische legitimiteit met betrekking tot deze arrangementen en maakt gebruik van een specifieke opvatting van legitimiteit die een onderscheid tussen input- en outputlegitimiteit maakt. De reikwijdte van een dergelijke aanpak is beperkt om drie redenen. Ten eerste is deze benadering normatief in de zin dat ze de legitimiteit van private sturingsarrangementen evalueert volgens bepaalde vooraf vastgestelde criteria. Als gevolg hiervan, informeert deze benadering ons nauwelijks over de verschillende manieren waarop legitimiteit tot stand kan komen. Ten tweede is deze benadering van origine bedoeld om regelgeving door staten te evalueren. Private sturingsarrangementen verschillen echter wezenlijk van traditionele overheidsregulering en hebben dus te maken met andere legitimiteitsvraagstukken. Ten derde is het evalueren van arrangementen door middel van starre criteria een nogal statische benadering, die de processen waardoor een standaard aanvaard wordt als een gezaghebbende norm, niet in ogenschouw neemt.

Daarom suggereert dit proefschrift een complementerende aanpak, die legitimiteit conceptualiseert als een relationeel en relatief begrip, in plaats van een normatieve maatstaf om private sturingsarrangementen te beoordelen. Legitimiteit is een relationeel begrip in de zin dat het zich ontwikkelt door de relatie tussen een sturingsarrangement en verschillende relevante doelgroepen. Legitimiteit is een relatief begrip in de zin dat de criteria van legitimiteit veranderen per historische en maatschappelijke context. In deze conceptualisering is legitimiteit geen statisch begrip, omdat het kan worden verleend en

ingetrokken door verschillende doelgroepen, terwijl tegelijkertijd de legitimiteitseisen kunnen veranderen. Daarom wordt legitimiteit in dit proefschrift opgevat als iets wat vorm krijgt in een sociaal proces en waarbij fasen van legitimering en de-legitimering opeenvolgend of naast elkaar kunnen plaatsvinden.

Daarom staat in dit proefschrift de volgende onderzoeksvraag centraal:

Hoe kunnen legitimeringsprocessen in private sturingsarrangementen worden geanalyseerd en begrepen?

Het proefschrift beantwoordt deze vraag door middel van vier individuele empirische analyses, die elk hun licht werpen op een ander aspect van een legitimeringsproces. Deze analyses richten zich op twee arrangementen in het bijzonder: de Roundtable on Sustainable Palm Oil (RSPO) en de Roundtable on Responsible Soy (RTRS). Deze twee arrangementen worden bestudeerd - hetzij in vergelijkend onderzoek of afzonderlijk - door middel van kwalitatieve onderzoeksmethoden, waardoor diepgaande analyses van de verschillende dimensies van hun legitimeringsprocessen mogelijk zijn.

Empirische hoofdstukken

Hoofdstuk 2 heeft als doel het proces van het creëren van legitimiteit in Roundtables beter te begrijpen. De legitimeringsprocessen van zowel de RSPO en RTRS worden hiervoor geanalyseerd. Uit deze analyse worden verschillende verklaringen voor de specifieke ontwikkeling van een dergelijke proces afgeleid. Het eerste verklaringsniveau is op het niveau van de betrokken actoren en adresseert de factoren ‘vertrouwen’ en ‘wederzijds voordeel’. Het tweede niveau heeft betrekking op meer institutionele factoren die mogelijkheden en beperkingen bieden voor legitieme interacties om zich te ontwikkelen, zoals de structuur van de agrarische productketen, het soort van bedrijven die een leidende positie in de keten innemen en de rol van overheidsbeleid. De analyse onthult een aantal mogelijke legitimeringsproblemen en hun gevolgen voor de bredere toepassing van dit sturingsmodel.

Hoofdstuk 3 suggereert dat het begrijpen van legitimeringsprocessen van private sturingsarrangementen een multidimensionale aanpak vereist. Dit wordt geoperationaliseerd door middel van drie aspecten die worden gebruikt om dergelijke processen beter te begrijpen: ‘legality’, morele rechtvaardigingen, en instemming /acceptatie. Deze aspecten komen voort uit verschillende theoretische tradities en worden

toegepast in een analyse van het legitimeringsproces van de RSPO. Dit empirische onderzoek onthult de specifieke kenmerken van dit legitimeringsproces en toont tegelijkertijd de waarde van een multidimensionale aanpak. De drie perspectieven vullen elkaar aan en verdiepen ons inzicht in legitimeringsprocessen door het zichtbaar maken van spanningen en 'trade-offs' in de verschillende manieren waarop private sturingsarrangementen legitimiteit kunnen creëren.

Hoofdstuk 4 begint met de constatering dat de democratische kwaliteit van private sturingsarrangementen een belangrijk onderwerp van academisch en politiek debat zijn. Aan de ene kant worden deze arrangementen gezien als een manier om internationaal milieubeleid te democratiseren. Aan de andere kant wordt het democratisch potentieel van deze regelingen zwaar bekritiseerd en geïnterpreteerd als een privatisering van wat publiek zou moeten zijn. Om dit debat wat te nuanceren, bekijkt dit hoofdstuk het democratisch potentieel van Roundtables. Roundtables worden over het algemeen gepresenteerd als arrangementen die voortkomen uit een deliberatieve opvatting over democratie. Dit hoofdstuk beoordeelt daarom de deliberatieve capaciteit van de RTRS en RSPO en toont in welke mate de communicatieve processen in deze arrangementen inclusief, gevolgtrekkend ('consequential') en authentiek zijn. Dit hoofdstuk concludeert dat het Roundtable-model de neiging heeft om tekort te schieten op twee criteria van deliberatieve capaciteit: inclusiviteit (van actoren en vertogen) en gevolgtrekking.

Hoofdstuk 5 richt zich op de interacties van Roundtables met publieke vormen van regulering en de invloed daarvan op de respectievelijke legitimeringsprocessen. Deze processen worden in dit hoofdstuk uitgesplitst in een interne en een externe dimensie. De analyse richt zich op het onderwerp van biobrandstoffen als de arena waarin de interactie tussen de verschillende vormen van bestuur optreedt. In deze arena vertegenwoordigen Roundtables private sturingsarrangementen. De Europese Unie, als publieke regelgever bij uitstek, verscheen onlangs op het toneel met haar richtlijn hernieuwbare energie (EU-RED). De interactie tussen deze twee vormen van bestuur leidt tot een competitie tussen uiteenlopende legitimeringsprocessen. Door deze competitie lijkt onbedoeld de bestuurlijke capaciteit op het gebied van biobrandstoffen af te nemen.

Conclusies

Het concluderende hoofdstuk geeft een overzicht van de empirische hoofdstukken en de specifieke onderzoeksbenaderingen naar legitimiteit. Op basis van deze resultaten, geeft het

hoofdstuk een vernieuwde conceptualisering van de legitimeringsprocessen van private sturingsarrangementen.

Legitimeringsprocessen kunnen worden gezien als delicate balanceeroefeningen, omdat verschillende dimensies van het begrip legitimiteit vaak met elkaar concurreren. Factoren die van invloed zijn op legitimeringsprocessen kunnen grofweg worden onderverdeeld in interne of externe en procedurele of substantiële factoren. Deze dimensies lijken het gebied, waarbinnen de meeste spanningen in legitimeringsprocessen ontstaan, te omvatten. Spanningen tussen interne en externe legitimeringsprocessen hebben betrekking op de relationele dimensie van het begrip legitimiteit. Deze spanningen ontstaan, doordat verschillende doelgroepen hun evaluatie van de private sturingsarrangementen baseren op verschillende normen voor legitimiteit en goed bestuur. De belangrijkste spanningen zijn het gevolg van verschillen in legitimiteitseisen van interne en externe doelgroepen, die vaak verschillende opvattingen hebben over duurzame landbouw en goed bestuur. Spanningen tussen inhoudelijke en procedurele aspecten van legitimeringsprocessen verwijzen naar de relatieve dimensie van het begrip legitimiteit. Zowel procedurele als inhoudelijke aspecten worden door private sturingsarrangementen gebruikt als bronnen van legitimiteit. Deze twee aspecten van een legitimeringsproces kunnen echter ook leiden tot spanningen in Roundtables. Het insluiten van een grote verscheidenheid aan belanghebbenden en beslissingen nemen op basis van consensus zijn cruciaal voor de rechtmatigheid ('legality') van Roundtables en dragen bij aan hun procedurele legitimiteit. In zowel de RSPO als in de RTRS genereert deze inclusieve strategie echter diverse compromissen in de morele rechtvaardigingen, die ten grondslag liggen aan hun duurzaamheidsnormen. Deze compromissen resulteren daardoor in een minder strenge standaard, wat kan leiden tot een daling van de substantiële legitimiteit.

Het afsluitende hoofdstuk gaat dieper in op de bijdrage van het onderzoek aan drie academische debatten ten aanzien van private sturingsarrangementen, zoals gepresenteerd in het inleidende hoofdstuk. Het eerste debat gaat over certificering - een belangrijk beleidsinstrument dat Roundtables gebruiken. Ten eerste kan certificering worden opgevat als een poging om legitimeringsprocessen te versterken, doordat een product wordt geproduceerd volgens bepaalde principes en criteria die zijn vastgelegd in een standaard. Roundtables lopen echter het risico dat er verkeerde informatie verspreid wordt als de duurzaamheidsnormen of de controlemechanismen niet in orde zijn. Dit risico vormt een belangrijke bedreiging voor de legitimeringsprocessen van Roundtables. Externe doelgroepen kunnen de beschikbare informatie gebruiken om de legitimeringsprocessen

van Roundtables en hun leden te betwisten. Ten tweede is private certificering in essentie een vrijwillig instrument en zullen stakeholders dus alleen deelnemen aan een Roundtable als het een potentieel voordeel oplevert. Dit kan tot spanningen leiden tussen de striktheid van de standaard en de bereidheid om te participeren, welke beide belangrijke bronnen van legitimiteit zijn. Problemen rondom legitimiteit worden vooral zichtbaar in de implementatiefase van Roundtables. Momenteel zijn ze niet in staat om de meerderheid van hun leden aan de normen te laten voldoen, laat staan het grootste deel van de industrie. Er zijn geen wettelijke instrumenten die actoren kunnen dwingen bij een Roundtable aangesloten te blijven. Bedrijven kunnen dus te allen tijde kiezen voor minder strenge normen ontwikkeld door overheden of door andere private sturingsarrangementen.

Het tweede debat gaat over het democratisch potentieel van Roundtables. Ten eerste presenteren Roundtables zich als inclusieve arrangementen die pogen een zo groot mogelijk aantal actoren te betrekken bij hun besluitvormingsprocessen. Deze private sturingsarrangementen sluiten inderdaad tal van actoren in, maar slechts een beperkte verscheidenheid aan vertogen. De aanwezige vertogen representeren een reformistische visie op duurzame ontwikkeling, die marktbenaderingen voor duurzame ontwikkeling promoot. Deze reformistische visie op duurzame ontwikkeling is gericht op de ontwikkeling van technologie en institutionele hervormingen. Dit in tegenstelling tot meer radicale visies op duurzame ontwikkeling die pleiten voor fundamentele veranderingen in normen, waarden en gedrag. Hierdoor is het onwaarschijnlijk dat Roundtables radicale transformaties van mondiale economische structuren en agrarische productiesystemen teweeg zullen brengen. Verschillende groepen actoren sluiten zich daarom uit van de besluitvormingsprocessen in Roundtables, omdat ze deze arrangementen niet zien als platformen om hun doelen te bereiken. De werking van Roundtables lijkt daarom in strijd te zijn met enkele van de fundamentele idealen van deliberatieve democratie, wat de legitimeringsprocessen van een Roundtable zou kunnen bedreigen. Ten tweede is een belangrijk principe in Roundtables besluitvorming door middel van consensus. Het is van fundamenteel belang voor een legitimeringsproces dat stakeholders tot een gezamenlijke probleemdefinitie komen en een bijbehorend systeem van regels. Hoewel dit in beide onderzochte Roundtables een moeilijk proces was, zijn ze erin geslaagd om duurzaamheidsnormen te formuleren door over te gaan op een pragmatische aanpak en controversiële kwesties soms weg te laten uit discussies. Het bereiken van consensus is echter niet altijd mogelijk, zeker niet als de geloofwaardigheid van het arrangement als geheel op het spel staat. In sommige gevallen wordt er overgegaan tot stemming, waarbij de mening van de meerderheid wordt overgenomen en waarbij het eventuele uittreden van

bepaalde leden voor lief wordt genomen. Ten derde zijn democratische beginselen sterk geïnstitutionaliseerd in Roundtables. Hoewel de Roundtables in staat zijn geweest om algemeen aanvaarde regels te ontwikkelen betreffende vertegenwoordiging, participatie, neutraliteit en procedurele rechtmatigheid, blijkt de uitvoering van deze regels in de praktijk moeilijk te zijn. De gelijke vertegenwoordiging van belanghebbenden is bijvoorbeeld problematisch. Terwijl op papier de juridische elementen in detail zijn vastgesteld, is dit soms niet toereikend als er conflicten zijn tussen machtige actoren in Roundtables. Omdat het uittreden van belangrijke stakeholders ook een bedreiging vormt voor het legitimeringsproces van een arrangement, worden conflicten soms buiten de Roundtable opgelost om het algemene proces niet in gevaar te brengen. Deze strategie maakt het sanctioneren van afwijkend gedrag mogelijk, terwijl alle partners in het proces kunnen worden gehouden. Ten vierde is het democratisch potentieel van private sturingsarrangementen interessant in relatie tot publieke regelgeving. Uit een analyse van de interacties van Roundtables met de EU in het kader van biobrandstoffen, blijkt dat deliberatieve democratische beginselen niet noodzakelijkerwijs gewaardeerd of beloond worden door publieke regelgeving. Sterker nog, publieke regelgeving kan het democratisch potentieel van private sturingsarrangementen en van het governance-systeem als geheel zelfs aantasten.

Het derde debat gaat over de verdeling van publieke en private verantwoordelijkheden voor duurzame landbouw. Ten eerste is de norm dat private actoren in staat zijn om verantwoordelijkheid te nemen voor publieke kwesties, een belangrijke morele rechtvaardiging die ten grondslag ligt aan de legitimeringsprocessen van Roundtables. Binnen Roundtables is er een brede consensus dat deze arrangementen het juiste platform bieden om een bepaalde sector te kunnen besturen, omdat ze een set van onderling verbonden belangen vertegenwoordigen. Ten tweede bootsen private sturingsarrangementen publieke bestuurlijke structuren na om hun legitimeringsprocessen te versterken. Publieke regelgeving is echter vaak gebaseerd op constitutionele vormen van democratie, terwijl Roundtables verwijzen naar meer deliberatieve vormen van democratie. Ten derde ondersteunen Roundtables overheidsregulering, door in hun standaard op te nemen dat bedrijven moeten voldoen aan alle van toepassing zijnde lokale, nationale en internationale wetten, ondanks dat ze overheden niet formeel toelaten tot hun besluitvormingsprocessen. Zo gebruiken zij de legitimiteit van overheden om hun eigen legitimeringsprocessen te versterken en zijn ze ingebed in en deels afhankelijk van publieke regelgeving. Bovendien zijn publieke en private actoren in een voortdurend proces van interactie. Private sturingsarrangementen hebben meerdere gelijktijdige relaties met

overheden en andere publieke instanties. Van dergelijke publiek-private interacties wordt vaak verondersteld dat ze private sturingsarrangementen versterken. Toch kan de publieke regelgeving ook een nadelig effect hebben door het uithollen van het legitimeringsproces van een privaat sturingsarrangement of van een governance-systeem als geheel.

Het concluderende hoofdstuk eindigt met een reflectie op de toekomst van Roundtables en neemt drie scenario's in ogenschouw over hoe de verdeling van verantwoordelijkheden voor duurzame landbouw tussen de publieke en de private actoren vorm kan krijgen in de toekomst. Het eerste scenario voorziet een versnelde institutionalisering van private sturingsarrangementen als belangrijke regelgevers voor duurzame landbouw. In dit scenario zullen overheden meer verantwoordelijkheden voor duurzame agrarische ketens overlaten aan bedrijven en NGO's. Deze trend is momenteel al zichtbaar, zij het vooral in Europese landen waarin duurzame tropische agrarische ketens benaderd worden vanuit de vraagzijde van de markt.

Dit scenario heeft verschillende sterke en zwakke punten. Aan de ene kant laat het een toenemende institutionalisering van duurzame ontwikkeling in de private sector zien. Naast bedrijven, spelen NGO's een prominente rol in het definiëren van de condities van duurzame landbouw. Bedrijven kunnen zo in staat zijn om de verantwoordelijkheid voor duurzame productie en consumptie meer op zich te nemen en om milieu- en sociale kosten van landbouwproductie verder te internaliseren. Aan de andere kant is het onwaarschijnlijk dat de private sector de ernstige duurzaamheidsproblemen, die gepaard gaan met mondiale agrarische productie en consumptie, kunnen oplossen. Roundtables en andere private sturingsarrangementen proberen over het algemeen om duurzaamheidsproblemen controleerbaar en beheersbaar te maken. Duurzame ontwikkeling is echter een steeds complexer wordend probleemgebied. Om deze ingewikkelde zaken te aan te kunnen, hebben Roundtables en andere private sturingsarrangementen de neiging om strikte discursieve en regulatieve grenzen te definiëren. Het is onwaarschijnlijk dat deze benadering helpt bij het adequaat aanpakken van deze complexe kwesties, die zich niet houden aan strikte grenzen, maar juist verschillende sectoren, niveaus en domeinen omvatten. Hoewel Roundtables vrij volwassen en verfijnde sturingsarrangementen zijn, is het een grote opgave om een hele sector te reguleren, zeker in de context van de 'vrije' markt. Zolang er markten zijn waarin geen vraag is naar gecertificeerde producten, zullen de problemen van onduurzame productie zeker blijven bestaan en zal de koppeling van duurzame productie aan private certificering tekort schieten. Bovendien is in dit scenario nationale soevereiniteit een verwaarloosd

concept. Roundtables zijn doorgaans Westerse initiatieven en zijn grotendeels gebaseerd op Westerse ideologieën en kunnen daarom worden opgevat door bepaalde groepen als neokoloniale pogingen om invloed uit te oefenen in ontwikkelingslanden.

Het tweede scenario is er één waarin nationale soevereiniteit juist een belangrijke rol speelt. Dit scenario voorziet dat nationale overheden hun rol als centrale actoren in het reguleren van duurzame landbouw (terug)nemen; vermoedelijk ten koste van private sturingsarrangementen. Nationale overheden ontwerpen en implementeren in dit scenario zelf certificeringsprogramma's. In tegenstelling tot private certificeringsprogramma's zijn certificeringprogramma's vanuit de publieke sfeer verplicht. Momenteel zijn dergelijke ontwikkelingen inderdaad zichtbaar in producerende landen. Zowel de Indonesische als de Maleisische regering formuleren hun eigen normen voor duurzame palmolie en verminderen hun betrekkingen met de RSPO.

Dit tweede scenario heeft ook een aantal sterke en zwakke punten. Aan de ene kant is dit scenario veelbelovend, aangezien duurzame landbouw niet afhankelijk is van marktdynamiek, maar wordt afgedwongen door middel van verplichte regelgeving en zo mogelijk een hele sector binnen een bepaald territoriaal gebied kan transformeren. Bovendien is het veelbelovend dat duurzame agrarische productie in dit scenario niet alleen op de agenda van consumerende landen staat, maar ook op de agenda van Zuidelijke productielanden. Aan de andere kant is het niet duidelijk hoe deze regelgeving er daadwerkelijk uit zal zien en of het echt de potentie heeft om de agrarische sector te transformeren. Uitvoering en handhaving van deze vorm van certificering kan problematisch zijn in nationale staten met zwakke administratieve structuren die worden gesteund door corruptie. Het is dan ook moeilijk te beoordelen of deze publieke vorm van certificering effectiever of legitiemer zal zijn dan private certificering zoals besproken in dit proefschrift.

Het derde scenario voorziet een cruciale rol voor de meta-governance-arrangementen. In dit scenario kunnen actoren uit zowel de publieke als de private sfeer een meer prominente rol spelen in het reguleren van duurzame landbouw door het aannemen van een bestuurlijke rol op meta-niveau. Dit zou de harmonisatie van verschillende certificeringsprogramma's in kunnen houden, zodanig dat ze naast elkaar kunnen bestaan zonder dat ze elkaar hinderen. Momenteel zien we dat een aantal intergouvernementele organisaties deze optie aan het exploreren is. Het forum van de Verenigde Naties over duurzaamheidsstandaarden (UNFSS) heeft de potentie om een prominente te worden. Een soortgelijk meta-governance-initiatief, zij het vanuit het private domein is ISEAL.

Dit derde scenario heeft ook zijn eigen sterke en zwakke punten. Meta-governance-arrangementen vanuit de publieke of private sfeer kunnen een gunstig effect hebben door het overwinnen van beperkingen van individuele private sturingsarrangementen. Bovendien lijken producerende landen in de tropen hun regelgevende macht steeds meer te willen benutten, terwijl consumerende landen duurzaamheid steeds vaker lijken te reguleren door het ondersteunen van private sturingsarrangementen. Dit zou kunnen leiden tot toenemende spanningen tussen Westerse en Zuidelijke benaderingen aangaande duurzame ontwikkeling. Hierdoor lijkt een geïntegreerde aanpak op mondiaal niveau veelbelovend. Ook kunnen deze meta-governance-arrangementen mogelijk bijdragen aan de geloofwaardigheid van duurzaamheidsstandaarden. Dit zou dan de legitimeringsprocessen van private sturingsarrangementen kunnen versterken. Deze meta-governance-arrangementen hebben zich tot nu toe echter alleen gericht op procedurele kwesties in plaats van zich te concentreren op de inhoudelijke aspecten van duurzaamheid. Het valt nog te bezien of deze meta-governance-arrangementen daadwerkelijk de kracht en het mandaat bezitten om een dominante en adequate rol te kunnen spelen.

Deze drie scenario's zijn niet onafhankelijk van elkaar, maar bouwen, aan de huidige voorzichtige ontwikkelingen te zien, op elkaar voort. Omdat er aanwijzingen zijn dat alle drie de scenario's zich nu gelijktijdig aan het ontwikkelen zijn - zij het gepropageerd door verschillende actoren afkomstig uit verschillende regio's op verschillende beleidsniveaus - is het onmogelijk om te voorspellen welk scenario dominant zal worden en hoe dit van invloed zal zijn op de ontwikkeling van de andere twee scenario's. Alle scenario's hebben verschillende zwakke punten en dus is de vraag misschien niet zozeer welk scenario het beste is, maar eerder hoe ze hun sterke punten het best kunnen benutten. Een strategische combinatie van de drie scenario's kan daarom een kans zijn om de individuele beperkingen van elk scenario te verminderen, en een meer legitiem bestuurlijk systeem voor de regulering van duurzame agrarische grondstoffen te creëren. Dit gaat duidelijk verder dan wat puur private of publieke initiatieven kunnen bereiken, en vereist georkestreerde inspanningen die het publieke en private omvatten, die nationale grenzen overstijgen en die de tegenstellingen tussen productie en consumptie voorbijstreven.

Curriculum Vitae

Greetje Schouten was born in Utrecht, The Netherlands, on June 5, 1982. She completed her secondary education at the Driestar College in Gouda, the Netherlands, in 2000. She studied International Development at Wageningen University (major in law and governance; minor in development economics), where she attained her Master degree in 2007. During the master she worked as an intern and later as research assistant at the Agricultural Economic Institute (LEI) in The Hague on the project 'value chains for pro-poor development'. In 2006, she went to Thailand for a research internship on new market opportunities for Thai smallholders. In 2008, she started her PhD research at Utrecht University in the Department of Innovation and Environmental Sciences, as part of the Maastricht-Utrecht-Nijmegen Programme on Partnerships (MUNPOP). She currently works at Wageningen University as a postdoctoral researcher for the Public Administration and Policy group and the Knowledge, Technology and Innovation group.