Institutions and Value Conflicts: The World Trade Organization and the Rise of Global private Food Standards

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Commensalistic institutions and value conflicts:
The World Trade Organization and the rise of global private food standards

Abstract
An important outcome of the Uruguay Round of multilateral trade negotiations was the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) which was set up to discipline the use of national food safety and animal and plant health regulations and to prevent their emergence as technical barriers to trade. The Agreement is based on a set of values which privilege free trade and scientific evidence, thus excluding many ethical considerations from the regulations that national governments can enact in relation to production methods in the agri-food chain. Separate from the SPS Agreement, a number of global private standard schemes have developed which have incorporated values rejected by the SPS Agreement. This paper examines the relationship between these two parallel institutional arrangement and argues that this case highlights a gap in the institutional literature with respect to a relationship between parallel institutions which co-exist in a commensalistic arrangement.

Key words: food standards, institutions, values, WTO

Introduction
Over the past two decades, there has been a notable rise in the application of private standards in the agri-food trade. These standards are set by supermarkets, either individually or collectively through organizations such as GlobalGAP, and often under pressure from civil society non-governmental organizations (NGOs). They can incorporate standards relating to labour conditions, animal welfare or environmental protection and standards for human, animal and plant health which are more restrictive than the scientifically-based standards recommended by international standardization bodies. Such standards are largely precluded from inclusion in government regulations by the provisions of the World Trade Organization (WTO) through the Sanitary-Phytosanitary (SPS) Agreement.

Private standards have become so pervasive that for many producers they are 'voluntary' in name only as they 'may be de facto applied as the industry norm by all actors in the supply chain' (WTO 2007, p. 3). Fulponi (2006, p. 6) reports on the basis of interviews with the food safety and quality directors of 16 leading food retailers in North America, Europe, Australia and Africa that between 75 and 100 percent of all food supplies are certified under private standard schemes. The private arrangements therefore work in much the same way as government sanitary and phytosanitary regulations behind the border, de facto by setting mandatory standards for suppliers into the agri-food chain. This development mirrors a trend in the global sphere where private voluntary codes are increasingly governing the behaviour of businesses (Vogel 2007). Apparently, the new private standards have not developed into a threat to the existence of the SPS
Agreement; rather they seem to supplement it and may have contributed to the latter’s persistence by reducing the pressure for change to its underlying values.

Though the phenomenon analyzed here is not unique\(^1\), it is not well-understood theoretically. Therefore the rise of private standards alongside WTO-compliant governmental regulations raises a number of interesting research questions in relation to the interplay between institution and context, only some of which have been dealt with in the academic literature. Recently, international political economists have gained an interest in institutional complexity (Aggarwal 1998; Alter & Meunier 2006) and have developed concepts such as parallel, overlapping and nested regimes (for example Alter & Meunier 2009, p. 15) to describe various ways in which regimes (or institutions) can relate to each other. However, though the concept of parallel regimes is introduced, the literature neglects the question of values as a source of complementary or competing relationships between them and leaves largely unexplored the question of why parallel regimes based on competing values emerge and how they sustain or undermine each other.

Following Crouch and Keune’s (2005) call for theoretical consideration of the persistence of institutional heterogeneity or ‘multiple action spaces’ over time, this paper draws on the historical institutionalist literature as the analytic framework to answer the questions of why parallel institutions emerge and how they may relate to each other. In particular Crouch and Keune direct the analyst’s attention to explaining the co-existence of institutional arrangements based on apparently inconsistent logics which are sustained over a lengthy period. As they (2005, p. 99) note, ‘Complex social arrangements can tolerate a considerable amount of internal tension’. This observation leads them to ask ‘how it is possible for institutional heterogeneity to persist over time?’. To answer this question, they advise analysts to direct ‘attention to “insulation” mechanisms, sub-institutions, divisions of labor, which limit the antagonistic interaction of distinct parts’ … and … ‘to develop concepts and theories of these [mechanisms], what they might be, how they might operate’ (2005, p. 99-100) While it is acknowledged, particularly in the historical institutionalist literature, that an institution forms part of a larger institutional environment (for example Pierson & Skocpol 2002, p. 706-713; Orren & Skowronek 2004), the relationships within that environment are under-theorized. Though the phenomenon of complementary institutions is addressed in the institutionalist literature, the concept applies to situations in which the primary and the complementary institutions are founded upon shared values.

The historical institutionalism literature contains a convincing account of the rise and persistence of institutions which embody particular values compromises reached at a particular point in time. Within the literature there are passing references to complementary institutions which occur around the primary institution. What characterises such institutional arrangements is that the primary and secondary institutions share values and objectives. The concept of values is

\(^1\) For example, new institutions such as labour market and private pension schemes have emerged, not to replace but to supplement public pension arrangements. Similar developments can be seen for private health insurance.
used here to encompass principles or standards about what is important; there is a normative element to values, which distinguishes them from ideas and which refers to narratives linking events in causal order and thereby providing meaning to certain situations (Blyth 2002). Research on values in the policy process suggests that complementary institutions may not always be based on similar values, but may on occasion embody competing values, thereby insulating the primary institution from challenges to its base values. This paper considers theoretically why parallel institutional arrangements based on competing values emerge and how they co-exist with the primary institution which would otherwise be under challenge.

The paper is structured as follows. It begins with a discussion of the historical institutionalist literature and points to an area that is arguably under-theorized; that is the role of institutions which exist alongside each other while embodying conflicting values. The case study is then introduced in support of our theoretical point. The paper concludes in a more speculative mood, considering the sustainability of these institutions and whether the ‘firewalling’ of conflicting values can continue indefinitely.

**Historical institutionalism and international political development**

Historical institutionalism has proved able to provide convincing explanations of domestic political development, but has largely been neglected in explanations of international political development. Discussing the potential to expand the application of historical institutionalism into international studies, Fioretos (2011) reaches the conclusion that the approach has an unrealised potential to provide new insights into international political development, explaining ‘the origin, structure, and consequences of political processes that led to the creation, reproduction and adaption of international institutions over time’ (2011, p. 393). However, as an analytical framework for explaining the emergence and persistence of parallel institutional arrangements in the domestic or international sphere, historical institutionalism needs further theoretical elaboration on the interrelationship between institution and context.

The literature on values in the policy process provides useful insights in further developing historical institutionalism to account for the emergence of parallel institutional arrangements. As Stewart (2009, p. 2) has pointed out ‘in every policy field, we find conflicts between powerful values that structure the kinds of decisions that can be taken’. Other scholars have recognized this in their work on advocacy coalitions (Sabatier 1988) and policy communities (for example Atkinson & Coleman 1992; Marsh & Rhodes 1992). If one accepts Easton’s (1953, p. 129) construction of politics as the ‘authoritative allocation of values’, institutions can be regarded as a concrete result of a particular values allocation or as the embodiment of a values compromise reached at a particular point in time. In Lindblom’s (1959) interpretation, the various values within the policy process are represented by ‘watch dogs’, often in the form of government agencies, whose role it is to represent and protect particular values. The establishment of parallel institutional arrangements can be a strategy invoked by actors (‘watch dogs’) who were either excluded from the process in which an institution based upon a particular set of values was established, or it may be a strategy pursued by those
interests who lost the struggle over values. As Thelen (1999, p. 385) points out, in politics ‘losers do not necessarily disappear’. Rather, the watchdogs for the losing values venue-shop for opportunities to pursue their values through alternative institutions (Baumgartner & Jones 1993) and as a result parallel institutional arrangements may emerge.

The recent development within the historical institutionalist debate has focussed on gradual change as an institutional survival strategy. Thelen (2003) and her associates (Streeck & Thelen 2005a; Mahoney & Thelen 2010) have engaged in efforts to develop theoretical models which can assist us in identifying various types of gradual institutional transformation and how the process of transformation unfolds. The varying abilities of institutions to adapt and transform to contextual change explains why some institutions survive and others vanish. As Thelen (2003, p. 211) points out: ‘institutional survival is often strongly laced with elements of institutional transformation to bring the institutions in line with changing social, political and economic conditions’. Therefore, to explain institutional persistence, it is necessary to look beyond processes of reproduction internal to the institution. As Pierson (2004, p. 16) suggests: ‘we can expect paths of institutional development to be shaped by key relationships among institutions – the focus of inquiry should be on this meso-institutional level, rather than on dynamics purely internal to a single institution taken in isolation’ (see also Orren & Skowronek 2004; Hall 2010, p. 212-214).

The potential for institutional survival depends on adaptation to a changing context. However, the recent strong focus on gradual institutional change (in particular Mahoney and Thelen 2010a; Streeck and Thelen 2005b) may have deemphasized the early insight of historical institutionalism that institutions may persist in their original form for quite a long time even though their contexts change. This tendency is captured in the notion of punctuated equilibrium, the backbone of historical institutionalism, which views political development as characterized by relatively short moments of innovative change followed by long periods of stability (Krasner 1984).

Insofar as institutionalists study the relationship between institutions, they are concerned with the way in which the institutional context impacts on the development of the institution subject to analysis. The relationship between institutions and contextual change is not one-way, i.e. institutions responding to contextual change to survive. Institutional stability and persistence also depend on the way in which changing social, normative, economic and political contexts are shaped by the existence and evolution of the institution itself. This reverse relationship in which the institutional context is shaped by the establishment of an institution has received relatively little theoretical attention. Neglecting this relationship is a weakness in the institutionalist literature since it misses an important element in explaining institutional persistence.

Thacher and Rein’s (2004) concept of firewalls, which allow value conflicts to be avoided through institutional separation, can help us understand how parallel institutions founded upon conflicting values can be sustained over time and avoid being entangled in institutional battles. Under this model, policy-makers
quarantine incompatible or conflicting values by addressing them separately, often in different institutions. As Thacher and Rein (2004, p. 469-470) point out:

By focusing attention of each institution on a subset of the values that ultimately matter to public policy, it is possible to simplify the task of practice and keep the pathologies of value conflict at bay. That arrangement helps to ensure that each value has a committed defender.

The establishment of such institutional firewalls may be a deliberate political strategy, but can also be an unintended consequence beyond the control of designers of primary institutions. They may well be formed by private sector actors and may develop in forms not anticipated by the designers of the primary institution; indeed, the very purpose behind the establishment of the primary institution may have been to prevent the development of private sector institutions.

However, for the designers of the primary institution this may not necessarily be an undesirable development because the rise of other institutions can prevent the reopening of value conflicts that were settled (at least temporarily) when the institution was formed. In effect, the establishment of a parallel institution may shield the primary institution from certain value conflicts and thus reduce pressure on it to engage in transformation processes which may threaten its persistence. The emergence of such a secondary institution may therefore not be unwelcome to the primary institution as it provides an avenue for the consideration of values that the latter is eager to exclude.

The concept of commensalism is proposed as a metaphor for this somewhat peculiar relationship between institutions which allows incompatible value systems to survive in parallel institutions in the same policy space. Commensalism is originally a biological term describing a symbiotic relationship between two organisms of different species in which one derives some benefit while the other is unaffected. The term has been appropriated and adapted by the social sciences over some time; for example it appears in a 1931 list of a ‘working vocabulary of sociology’ (Eubank 1931, p. 305). The concept has been refined and expanded beyond the biological sciences to present a more nuanced picture of the relationship between individuals and groups (in human ecology) and between companies, unions and other organisations (in the administrative sciences and in organisational sociology). A commensalistic relationship differs from a complementary relationship or what Streeck and Thelen (2005b, p. 23) characterize as layering which allows the ‘active sponsorship of amendments, additions, or revisions to an existing set of institutions’ in a way which does not undermine them. In a commensalistic relationship there is an element of competition but also of mutual benefit from the coexistence of the institutions. Hawley (1950, p. 39) explains commensalism as a relationship in which individuals or species ‘make similar demands on the environment’ and in which there is an element of competition but also mutual benefits from co-existence. He describes commensalism as ‘co-action of like forms’ (1950, p. 209).
Case study: The rise of a parallel institutional arrangement in the agri-food chain

This paper analyses the relationship between the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), an intergovernmental institution within the World Trade Organization (WTO), and global private food standards schemes, focusing on GlobalGAP, which is the dominant player. The case study is based on reviews of the literature and of WTO and GATT (General Agreement on Tariffs and Trade) documents. In addition, interviews were undertaken in February and March 2010 with representatives of farm groups in the UK and Europe, Assured Food Standards in the UK, WTO officials, officials at the European Commission, representatives of the Eurogroup for Animals and with an industry representative in the horticulture industry in Europe. Some of the interviewees preferred not to be identified directly and this has been respected in the reporting of their comments.

The Primary Institution

The basic idea behind the SPS agreement is to create a level playing field for trade in food, and to prevent WTO member states from using domestic food safety and animal and plant health legislation as technical barriers to trade. To understand the emergence of the private food standard schemes, such as the GlobalGAP, it is important to analyse the historical context within which the SPS Agreement was negotiated and designed because this had an impact on how the broader institutional context in global food trade developed.

The SPS negotiations were an integral part of the package of agreements negotiated as a single undertaking in the Uruguay Round of multilateral trade negotiations. Domestic regulations related to trade in food were seen by food exporters as a potential loophole for escaping increased market access for agricultural produce which was envisaged as the outcome of the negotiations on the Agreement on Agriculture (Bredahl & Forsythe 1989, p. 190; Daugbjerg & Swinbank 2009). Article XX(b) of the GATT allowed countries to invoke regulations to protect human, animal and plant life and health but it did not provide any enforceable disciplines on such measures and therefore did not prevent countries from using food safety, animal and plant health regulations as technical barriers to trade. The Codex Alimentarius Commission (established in 1962) and other standardization bodies tried to harmonize standards, but their standards were not binding. The Standards Code which was concluded among the US, the EU and about twenty other GATT member states during the Tokyo Round (1973-79) (Swinbank 1999, p. 324) proved unsuccessful in disciplining domestic sanitary and phyto-sanitary regulations in food trade (Bredahl & Forsythe 1989, p. 190). The negotiation of an SPS Agreement sought to establish an agreed intergovernmental legal framework addressing these problems.

During the Uruguay Round negotiations, there was broad support from the EU and the developing countries actively engaging in the negotiations for a US proposal on international institutionalized standardization as a basic provision of the SPS Agreement. In-principle agreement on this aspect of the SPS Agreement was therefore reached relatively early, in November 1988 (Büthe 2008, p. 243-244).
The text (GATT 1990b) was all but settled by November 1990 (Interview, WTO Officials, March 2010) and was circulated as part of the so-called Dunkel text in December 1990 (GATT 1990a). The November text included a preamble which noted that the bracketed (unagreed) sections were ‘linked to the question of whether or not this agreement should apply to measures taken for the protection of animal welfare and of the environment, as well as of consumer interests and concerns’ (GATT 1990b). This reflected the fact that the EU wanted additional consumer concerns, such as the environment and animal welfare, included in the Agreement (Skogstad 2003, p. 115-116). However, these issues were dropped from the final SPS Agreement. Although ethical consumer concerns were of particular interest to the European Union, the Commission Delegation did not produce a specific text for incorporation into the SPS Agreement (Skogstad 2003, p. 116 ; Interview, WTO Officials, March 2010). Considering that the EU was already entangled in a trade dispute with the US over beef hormones(Skogstad 2003, p. 144), it seems to be a bit of paradox that the EU gave in on this issue. Skogstad (2001, p. 493-494; 2003, p. 118) argues that political attention in the EU was on the Agricultural Agreement, and that the negotiations on sanitary and phytosanitary measures were left to trade diplomats. Faced with strong US and Cairns Group opposition to the inclusion of ethical consumer concerns in the Agreement, the EU decided to settle for an agreement which, after all, would be a major improvement in relation to the rules in the GATT, article XX(b). Further, they believed that the beef hormone dispute could be managed in their favour.

The outcome of the negotiation was an SPS Agreement ‘Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health’(WTO 1998, Preamble), ‘provided that such measures are not inconsistent with the provisions of … [the] Agreement’ (WTO 1998, art. 2). The purpose of the Agreement is to ensure that SPS measures are not applied as disguised restrictions to international trade(WTO 1998, preamble). This is to be achieved by science-based risk management, harmonization of standards and equivalence. Article 2 of the agreement states ‘Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence’ (WTO 1998, art. 2). With respect to harmonization, the Agreement urges (but does not require) countries to apply international standards in their domestic legislation related to food trade where they exist, and the Agreement refers to three international standardization bodies such as Food and Agriculture Organization’s (FAO) Codex Alimentarius Commission. If domestic standards comply with the international standards of these bodies they are WTO compatible. Countries are allowed to introduce higher domestic standards if they can be scientifically justified (article 3). Equivalence means that importers must accept standards of the exporting countries if the latter can demonstrate that they are equivalent to the importer’s standard (WTO 1998, art. 4).

The reliance on science to set international standards and to determine whether stricter national standards comply with the Agreement implies that the focus of the SPS Agreement is on processes and production methods (PPM) affecting the physical content of the final food product and impacting on the health and life of
humans, animals and plants. As Winham (2003, p. 138) notes: ‘The SPS Agreement did not provide for the criteria other than scientific procedures that the EU wished to introduce into risk assessment’. The Appellate Body’s ruling in the dispute on beef hormones introduced more flexibility into scientific risk assessment, reasoning that such assessments need not be based on mainstream science, but could rely on divergent opinions from other qualified and respected sources (Winham 2003, p. 139). However, the ruling did not open the window for risk management based on ethical consumer preferences regarding the ways in which food is produced, and which do not have an impact on the physical content of the final product affecting human, animal and plant health and life, as a basis for government food safety regulation. Such concerns are often referred to as non-product related process and production methods (npr-PPM). An example of npr-PPM regulations are organic farming rules which prohibit the use of pesticides regardless of whether or not their use would have any impact on human health. Npr-PPMs are not covered by the SPS Agreement, but presumably by the Agreement on Technical Barriers to Trade (the TBT Agreement) which applies to ‘All products, including … agricultural products’ (WTO 2010a, art. 1.3) with the exception of the sanitary and phytosanitary measures covered by the SPS Agreement. The objective of the TBT Agreement is ‘to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade’ (WTO 2010a, preamble). However, there is some debate among trade lawyers, trade analysts and trade officials on whether the TBT Agreement covers npr-PPMs related to food production and processing. Annex 1 of the TBT Agreement can be interpreted as including npr-PPMs, but the language is ambiguous and there is not agreement among WTO member states on this issue (Josling et al. 2004, p. 51-56; Vranes 2010).

In summary, the institutional arrangements within the WTO for governing food safety and animal and plant health regulation in the context of international trade are clearly based on a set of values that privilege scientific understandings of what constitutes ‘safe’ products with respect to animal, plant and human health. The European Union attempted to incorporate broader ‘consumer concerns’ in the allowable measures but this was resisted by other parties to the negotiations and was eventually excluded from the SPS agreement. However, these concerns were still important for the European Union as demonstrated by the longstanding beef hormone and GMO disputes in the WTO which developed into highly contested trans-Atlantic trade conflicts. In both cases, the EU had banned imports on the basis of consumer concerns (Winham 2009, p. 411-412; Young 2009, p. 677-678). More generally, European consumer concerns about animal welfare, labour standards and other broadly ‘ethical’ issues did not go away. Therefore, the EU attempted to have the SPS Agreement renegotiated in the ill-fated Millennium Round ‘To ensure fair participation of all interested parties, including consumers, in the decision making process of establishing international standards’ and ‘To clarify and strengthen the existing WTO framework for the use of the precautionary principle in the area of food safety’ (Commission of the European Communities 2009, p. 18). In the Doha Round, the European Union again tried to put the issue on the agenda by attempting to persuade the other WTO members
to adopt an ‘authoritative interpretation’ which would include animal welfare as a legitimate concern under the TBT Agreement, but received little support for this (Swinbank 2006). This indicates that nprr-PPM based regulations remain politically sensitive within the WTO. However, subsequent to the finalization of the SPS Agreement, a series of events occurred that changed the broader policy context within which food safety and animal and plant health was considered and opened up an alternative avenue for advocates of these values to pursue their goals.

The changing external context
During the 1990s there was a series of food safety scares in Europe. The highest profile scandal was probably the outbreak of ‘mad cow disease’ (bovine spongiform encephalopathy – or BSE) and the consequent slaughter of large numbers of animals. The country that was hardest hit by BSE was the United Kingdom, with the scare costing the economy in the region of £5 billion (Interview, ASF Official, February 2010). Around the same time, the UK government implemented a fundamental change to its food safety legislation with the passing of the 1990 Food Standards Act. This legislation shifted the responsibility for food safety by requiring supermarkets to exercise ‘due diligence’ in ensuring the food they stocked was safe, rather than simply relying on warranties from suppliers (Henson & Caswell 1999; Interview, ASF Official, February 2010). Freidberg (2007, p. 323) describes this change as providing the supermarkets with ‘greater autonomy in matters of safety and quality’. The ‘privatising’ (Ménard & Valceschini 2005, p. 433) of food safety put pressure on the supermarket chains to strengthen their control of food production processes.

The food safety scares and the shift in responsibility for food safety from the state to the retailers coincided with an important trend in supermarket food retailing; the rise of the high-end home brand. Though home branding has a long history, there was an increase in the 1970s in the form of plain packaged, generic foods which competed at the low price end of the market for basic foodstuffs such as flour, butter etc. In the 1990s a new form of own-branding emerged at the other end of the market. In a highly competitive environment in which profit margins were very thin, supermarkets turned their attention to meeting the demands of wealthier consumers for fresh, novel and convenient foods, such as ready-to-eat gourmet meals (Burch & Lawrence 2005). This is a particularly high value-added segment of the food market. For example, Pelupessy and van Kempen cite the case of a kilogram of carrots which, in their survey in 2004, cost €0.99 for the basic loose product but was as much as €6.60 for the ‘Ready-to-eat julienne of carrots (washed, peeled, sliced) in a bag’ (Pelupessy & van Kempen 2005, p. 365). Moving into these areas of food marketing and linking this to premium home branding provided supermarkets with a means for taking control of the value chain. However, the adoption of premium home branding exposed supermarkets to significant risk if a product in their line was the subject of a food scare, due to the potential for the whole brand to be damaged. In 1998, own-branded products accounted for ‘around 62% of new product launches’ (Henson & Northen 1998); a figure which is likely to have grown over time. The integrity of these brands is therefore of critical importance to the retailers.
While retailers have clearly reacted to changing legislative obligations as well as the needs of brand protection, they have also seen standards as a means of competitive differentiation in the marketplace (Fulponi 2006, p. 6). In some cases this has meant that retailers, rather than responding to consumer demands, have defined consumer needs to suit their own purposes. Supermarkets increasingly view agri-food standards as strategic business tools, ‘whether it is to gain access to new markets, to coordinate their operations, to produce quality and safety assurance to their consumers, to complement their brands, or to define niche products and markets’ (Hatanaka et al. 2005, p. 356). Farm groups in Europe interviewed for this research observed that the consumer does not always understand that retailers define their standards as part of a market strategy. Our interviewees argued that ‘quite often you see retailers acting as spokesperson for consumers when they are really not’ (Interview, farmer organization, March 2010).

The rise of global private standards
The agri-food industry responded to the changes to the UK legislation and the food scares by establishing a series of food assurance standards across almost every sector of the industry, aimed at restoring consumer confidence in the food chain. One of our interviewees argued that the changes to the UK legislation were ‘almost as important in creating these self-regulatory schemes as the crisis management. I think the two of them went hand-in-glove’ (Interview, ASF Official, February 2010). Although the schemes were initially developed by individual supermarkets, producers recognized the risk of the proliferation of an array of potentially inconsistent standards and audit requirements. This resulted in the push for a single national scheme in the UK to ‘corral all of the retailers and other buyers’ to offer one inspection and one assurance certificate (Interview, ASF Official, February 2010). This culminated in the creation of Assured Food Standards, a non-profit company limited by guarantee, governed by a body comprising all stages of the food production chain, and owner of the Red Tractor assurance logo. Beyond the UK, a group of supermarkets, food retailers, NGOs, consumer groups and others formed EUREP (The Euro Retailer Produce Working Group) in 1997. EUREP established a system of Good Agricultural Practice (EurepGAP) which went beyond simple food safety concerns to include protocols for sustainable food production.

The growth of home branding, combined with the normative and consumer-focused element of EurepGAP, opened the supermarkets up to a further challenge from civil society groups with an interest in promoting corporate social responsibility (Hatanaka et al. 2005, p. 364). While supermarkets were reducing the chances that their brands would be threatened by a food safety scare, due to their increasing control over the supply chain, they remained vulnerable to campaigns on issues such as the environmental impact of the producers who supplied them or their use of child labour. Supermarkets agreed to cooperate with NGOs ‘to assure a fairer as well as cleaner food supply’ (Freidberg 2007, p. 324); resulting in the inclusion in EurepGAP of broader concerns than product safety. Just as activist NGOs pushed for corporate social responsibility in the area of manufactured products, for example with respect to Nike and soccer balls produced in Pakistan (Nadvi 2008), they took advantage of the supermarkets’ vulnerability with respect to brand protection to argue that consumers’ concerns
about food production are broader than just the actual biological safety of the food they purchase.

In 2007 EurepGAP became GlobalGAP and further expanded its membership and the commodities covered by its standards. GlobalGAP contains a strong normative element in its concept of ‘Good Agricultural Policy’ and the norms embedded in the standards are very clearly Euro-centric. Campbell (2005, p. 6) suggests that the GlobalGAP/EurepGAP program ‘proposes to add value in the mind of the consumer. At the heart of its mission is the production of a virtual image; an imagined countryside’. In more measured language, Josling et al (2004, p. 183) describe these concerns as arising from “rich country” consumer sensitivity.

The role of private standards in supporting the survival of the SPS Agreement

The trend to private standards of the agri-food chain largely post-dates the finalization of the SPS Agreement in the Uruguay Round of multinational trade negotiations. The private standards have incorporated elements which would not be allowable under the SPS Agreement if they were introduced by national government signatories to the agreement. Firstly, in relation to sanitary and phytosanitary standards, the private standards schemes often do not apply international standards established upon the basis of scientific risk assessment but apply stricter standards (WTO 2009a, p. 24-25; WTO 2010b, p. 6) often set arbitrarily and for marketing purposes (Interview, farm group officials, March 2010). Secondly, a number of standards are based on ethical consumer preferences. European attempts to incorporate the latter issues such as animal welfare, labour standards, environmental management and similar ethical consumer concerns into the SPS Agreement were dropped from the final text. GlobalGAP has picked up many of these issues and they are now, by virtue of the reach of GlobalGAP’s members, de facto standards for many producers.

Although this development appears to run counter to the intention of the SPS Agreement, the rise of GlobalGAP and other private standard schemes has arguably played some part in sustaining the SPS Agreement. The SPS Agreement has been in place now for the best part of two decades. It was not opened for negotiation in the current, ongoing Doha Round, and there is no sign of its being reopened in the near future. This is not to suggest that the Agreement has been static over its lifetime. The Agreement itself is only quite brief so

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2 We accept that the SPS Agreement governs the activities of government regulators and that the marketplace is free to develop its own standards in response to consumer demands. However, the SPS Agreement expects governments ‘to take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories ... comply with the relevant provisions of this Agreement’ (WTO 1998, p. Article 13). In addition, exporters/suppliers within a state who find the requirements of the standards particularly onerous will in all probability raise their concerns with their governments calling on them to act on their behalf. As shown below this has already happened as the issue of private food standards has been raised in the WTO SPS committee and thus become a political issue. (For a more detailed discussion of this issue see Henson & Humphrey 2009, p. 40-42).
inevitably the SPS Committee has needed to clarify elements as it has been implemented; this is partly achieved through three to four meetings a year of the SPS Committee which considers ‘contentious SPS issues on an ongoing basis’ (Josling et al. 2004, p. 41). A 2005 review of the operation of the SPS Agreement (WTO 2005) indicated however that the values underpinning the Agreement have not been challenged. It states that ‘To date, no Member has proposed changes to the basic provisions of the SPS Agreement, or questioned its science-based requirements, the encouragement of harmonization with international standards, or the obligations for transparency’ (WTO 2005, p. 2). It was explained to us that there had been some discussion in the lead up to the current Doha Round of negotiations about opening up the SPS Agreement for discussion, however

There really was just not agreement among members as to whether they needed to open it up and if they were to open it up what they wanted to do with it and the problem is that what they wanted to do with it at best was going in opposite ways. So I think it was sort of ‘we don’t open Pandora’s box for the time being’ (Interview, WTO Officials, March 2010)

It was also suggested that the Agreement will not be ‘opened independently of another trade round.’ In terms of our theoretical framework, the private standards have served to provide those values not promoted by the SPS Agreement with an alternative avenue for their expression. Several of our interviewees emphasized that private standards were responding to consumer demand for ethically produced food and that there was a general will to purchase products with ‘a good conscience’ (Interview, horticulture importer, February 2010). From the perspective of NGOs, the private arrangements provide a welcome alternative venue for pursuing their goals. Our interviewees at the Eurogroup for Animals, for example, indicated that they see private standards as ‘a good strategic way of moving policies and activities within the food sector because private companies can agree and implement animal welfare standards much quicker and more efficiently compared to the regulatory approach’ (Interview, March 2010). They noted that GlobalGAP embedded more elements of animal welfare than most schemes and that the Eurogroup had been invited to work with GlobalGAP to improve these components of its standards.

From the perspective of the EU, the ‘loser’ in the values negotiation around the SPS Agreement, private standards appear to be a not unwelcome development. However, this claim is difficult to substantiate directly and therefore we have to rely on indicators of this preference of the EU in our analysis. Rather than preventing the emergence of private food standard schemes, the EU attempts to facilitate such development. The main concern for the Commission is that any private certification schemes remain compliant with EU regulation. The European Commission has undertaken some recent work on private certification schemes, commissioning a study by the Joint Research Centre in 2006 and holding a conference in 2007 which was followed by the issuing of a Green Paper. That Working Paper noted that business-to-business certification schemes like GlobalGAP were becoming concentrated and ‘quickly becoming de facto industry standards’ to the point where they ‘may sometimes no longer be called voluntary’ (DG Agriculture and Rural Development 2008, p. 13). In 2009 the Commission released a communication based on the Green Paper (Commission of the European Communities 2009) which set out strategic orientations for certification
schemes. Following up in relation to these strategic orientations, in December 2010 the Commission has issued guidelines for private certification schemes with a focus on the need for transparency, stakeholder representation in standards development and independence of certification and audit (European Union 2012).

The Commission does not consider these private standards to be an issue for the SPS Agreement. Our discussions with WTO officials, however suggest that other signatories to the SPS Agreement are not so sanguine about the emergence of private standards. Some developing countries, particularly in Latin America, were described as being ‘vociferous’ in their criticism of these standards. For instance at the SPS Committee meeting in February 2009, the Brazilian representative summarized the Latin American view quite clearly, saying that ‘private standards represented higher costs for trade, a divergence from international standards, and confusion for exporters’ (WTO 2009b, p. 26). However, this does not seem to be a widely held view in the SPS Committee as a recent questionnaire-based survey of members on this topic attracted a ‘relatively poor’ response (Interview with WTO Officials, March 2010); 40 out of 153 members submitted responses (WTO 2009a, p. 1). The fact that the EU remained silent at the SPS Committee meeting (WTO 2009b) suggests that the increased use of npr-PPM standards in global food trade is perhaps not an unwelcome development for the EU. Had the EU not endorsed that development, it would most likely have voiced its discontent in the committee.

The private standards seems to be effectively insulating the SPS Agreement from a reopening of debate over consumer concerns such as animal welfare, labour standards etc, by ‘firewalling’ these competing values and providing them with an alternative institutional arrangement. As our interview with the Eurogroup for Animals indicates, NGOs may not be particularly interested in seeking to incorporate their values in the SPS Agreement as they are being addressed more effectively, and more rapidly, through schemes such as GlobalGAP. As the NGOs move their attention to the private standards, they are reducing pressure on governments to seek to reopen the values debate in relation to the SPS Agreement in the WTO. Similarly, advocates of broader values such as the EU are also seeing the concerns of their citizens addressed in their role as consumers. This suggests that, in terms of our historical institutionalist framework, institutional stability can be the result of the rise of alternative institutional arrangements that ‘take care of’ values that might otherwise threaten the existence of the primary institution. If an institution is resistant to promoting the values of citizens and civil society groups, the latter do not need to pressure their governments to reopen and renegotiate hard fought battles, they can take advantage of the existence of an alternative institutional arrangement through which they can pursue their goals. However, there remains the question of the sustainability of such an accommodation. Crouch and Keune’s work (2005)

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3 The issue of private standards is mainly discussed in the SPS Committee and, interestingly, only to a very limited extent in the TBT Committee (WTO 2010b, p. 5) under which npr-PPM standards presumably fall. Thus, so far the political attention has attempted to focus on the private PPM standards related to the issues covered by the SPS Agreement (WTO 2007; WTO 2009b; WTO 2009a), but the discussions have moved beyond these to include npr-PPM based standards (WTO 2010b, p. 2 and 4).
suggests that one possible future is for the currently ‘subsidiary’ organization to move to a dominant role in the policy space. However there is no indication that this will occur in the near future.

Conclusions: potential for instability?
The rise of GlobalGAP and similar private regulatory structures in the agri-food chain provides a useful case study to illustrate our contention that institutional survival is influenced by the way in which social, political and economic context responds to the establishment of an institution or institutional change. This relationship between institution and context has received relatively little theoretical attention in the institutionalist literature. In this paper, we have argued that institutional survival can be enhanced by the development of commensalistic institutions which embody conflicting values; thereby insulating the primary institution from a potentially damaging reopening of its underpinning values compromise. Drawing on both the historical institutionalist literature and work on the role of values in the policy process, we have proposed a framework for analysing secondary institutions which operate in the same policy space but embody quite different sets of values. We have outlined how the rise of private standards in agri-food has addressed values that would be inconsistent with the underpinning rationale of the SPS Agreement and has provided NGOs, and other actors with an interest in the promotion of broader ethical issues, with an alternative venue for pursuing their objectives, thereby reducing pressure on the primary institution to reopen the value conflict.

Though there is evidence that commensalistic institutional arrangements emerge to promote values excluded from consideration in the primary institution, an important question, remaining unanswered in our research, is whether these arrangements are politically and institutionally sustainable in the long run. Firewalling in the form of establishment of commensalistic institutional arrangements is probably not a sustainable long term solution to value conflicts because ‘In reality … institutions can rarely insulate themselves permanently from the values they try to shed … One reason for this is that over time, different institutions interact with one another, and the separated system may lose its pure lines of institutional demarcation’ (Thacher & Rein 2004, p. 472-473). When commensalistic institutions adjust, even marginally, the institutional boundaries may change as they each incorporate aspects of values pursued by the other, causing conflict over institutional jurisdictions. The example was given of feed hygiene standards in the UK where farmers assured under the Red Tractor scheme are considered ‘lower risk’ and therefore are less likely to receive an inspection by Trading Standards (Interview with farm group officials, February 2010). This blurring of standards potentially brings these measures under the purview of the WTO if the state is de facto using these standards to achieve its regulatory goals and the standards include elements not covered by the SPS Agreement.

Another source of tension between commensalistic institutional arrangements is if the secondary institutions become too successful and dominate the policy field ‘they may fundamentally alter the overall trajectory of development as the old
institutions [i.e. the primary institutions] stagnate or lose their grip and the new ones assume an ever more prominent role in governing individual behaviour’ (Streeck & Thelen 2005b, p. 23). In such situations they may undermine the core values of the former, reopening the original value conflict and lead to the breakdown of one or the other institution, or of both. Our research has demonstrated the analytical utility of the concept in explaining institutional persistence, but more research is needed to establish the long sustainability of institutional persistence based on the establishment of commensalistic institutional arrangements and in particular whether such commensalistic institutional relationships are coincidental and/or transitory.

References


Commission of the European Communities (2009) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Agricultural Product
Quality Policy Com(2009) 234 final, 28.5.2009 Brussels, Commission of the European Communities


Eubank, EE (1931) The Vocabulary of Sociology. Social Forces IX, 305-320


GATT (1990a) Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Revision, MTN.TNC/W/35/Rev.1 Trade Negotiations Committee Multilateral Trade Negotiations Uruguay Round,3 December 1990


WTO (1998) *Sanitary and Phytosanitary Measures* WTO Agreements Series 4 Switzerland, WTO


WTO (2009b) *Summary of the Meeting of 25-26 February 2009*, G/SPS/R/54 Committee on Sanitary and Phytosanitary Measures, 28 April

WTO (2010a) *Agreement on Technical Barriers to Trade* 28 December 2010

WTO (2010b) *Possible Actions for the SPS Committee Regarding SPS-Related Private Standards*, G/SPS/W/247/Rev.2 Committee on Sanitary and Phytosanitary Measures, 15 June 2010