Regulating value chains

Bergerie de Villarceaux, August 2016

Preparatory paper

BananaLink

BASIC

RONGEAD

Commerce International & Développement Durable

Final version
July 2016

Summary

1. Introduction

The last thirty years have been characterised by the growing replacement of governmental regulation by non-binding rules promoted by economic players in the name of the freedom to do business. This major shift has left the door open to a significant increase in the social and environmental challenges that we face, to the point where these challenges now endanger our societies as we have known them.
Given the growing inability of States to solve these challenges on their own within nation state boundaries, the need for complementary regulation of value chains (i.e. all the way from workers and producers of the raw materials through to the final consumers) is more urgent than ever.

When we talk of 'regulation' we mean: «the whole range of measures and processes through which a social system manages to retain its cohesion and to reproduce its essential characteristics despite factors of instability and conflict which may arise as much from the external environment of the system as from its internal divisions. »[1]

In general terms, the term 'regulation' covers two major concepts[2] :
- legislation, that takes the form of laws and administrative rules enacted by States, applying to all within the jurisdiction, and linked to the authorities which exercise powers to monitor and police
- governance, that focuses rather on the processes of coordination and decision-making, as well as on associated mechanisms of deliberation whether they be internal to companies or between different types of stakeholder, including States (for example procedures for the drafting of negotiated standards).

In practice, the use of the term 'regulation' often carries particular connotations, especially in the fields of economics and law, and often reflects an ambiguity in relation to the role of the State: in English, for example, the term is used to mean both 'legislation' and 'regulation' in the more general sense (while these are different words in French).
However, the law illustrates just how imprecise the boundaries can be between the two concepts: its rules have always emanated as much from States (with the aim of legislating) as they have from the practices of private interests and the dynamics of governance.
We therefore propose a perspective encompassing both of these conceptual dimensions, and based on institutional economics and the sociology of law[3] in order to analyse the issues surrounding the regulation of value chains in the current context of liberalisation and globalisation.

This report explores the matter in four stages:
- The aggravation of the social and environmental challenges posed by our current modes of production and consumption (as the backdrop).
- The history of value chain regulation policies implemented by States to address these challenges, the wave of hostility that binding commodity chain regulation has had to face since the 1980s and the current rise of self- and voluntary regulation initiatives led by private actors.
- The results of our comparative analysis of five hybrid initiatives that seek to bring together regulatory and voluntary approaches to overcome the inability of States and companies to address the current social and environmental challenges we face.
- Finally, we propose questions to deepen and extend our reflection beyond this report.

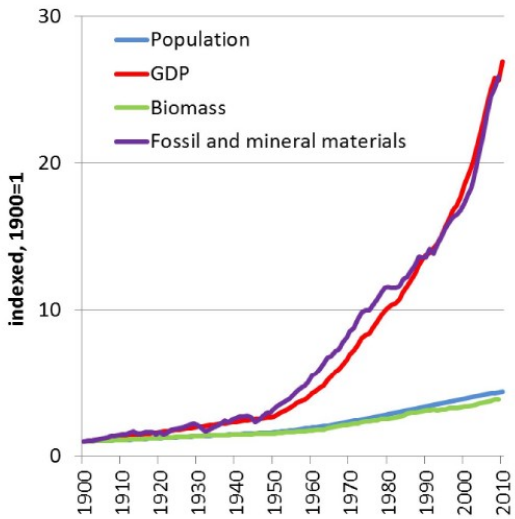
[1] C. Bessy, T. Delpeuch et J. Pelisse, Droit et régulation des activités économiques : perspectives sociologiques et institutionnalistes, Collection Droit et Société, L.G.D.J., 2011 Cette définition est proche de celle proposée par Robert Boyer : « mécanismes concourant à la reproduction d'ensemble et à l'accumulation du capital, compte tenu des structures économiques et des formes sociales en vigueur » (Théorie de la Régulation, 1986 p. 30).
[2] C. Bessy, T. Delpeuch et J. Pelisse, Droit et régulation des activités économiques, 2011 op. cit.
[3] Ibid.

2. Unsustainable production and consumption models

a) Reaching the Earth's limits

While most human societies tried to maximise the use of the available resources, using scarcity as a source of creativity and progress, the industrial revolution and the consumer society born in 1945 are based on the logic of exploiting all available resources without any limit – be they renewable or not – and producing increasing amounts of waste, proportionate to the urbanisation rate and changes in the way of life.

The growth in world consumption– especially of energy and minerals – is no longer based on population growth, but rather on the creation of economic value (see diagram below based on research from the Social Ecology Institute of Vienna)[4]. The same is true for waste generation.[5]

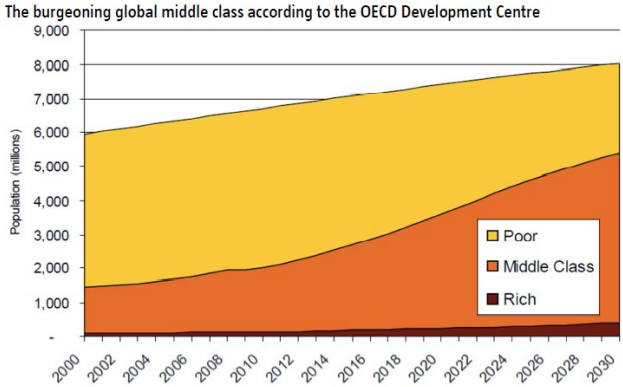


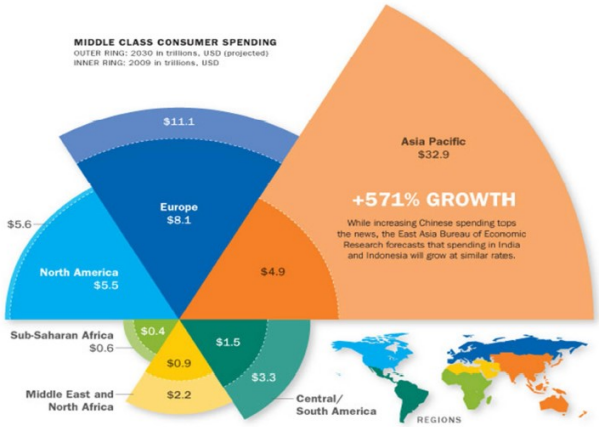
Evolution of the population, GDP, materials' consumption and biomass between 1900 and 2010
Source: Kraussmann and al., Social Ecology Institute of Vienna (Austria)

This evolution has been accelerating over the past 20 years, mainly because of the rapid urban population growth in many regions across the globe and the emerging middle class that embraced consumerist ways of life:

- According to the United Nations, over half of the world population now lives in cities: the number of people living in urban areas is four times higher than it was in 1950, and the urban population is likely to reach 5 billion in 2030, the equivalent of the total population on Earth back in 1987; [6]
- The size of the middle class could triple between 2000 and 2030, generating a growth in consumption on a global scale, essentially in Asia and Latin America (see diagrams below).[7]

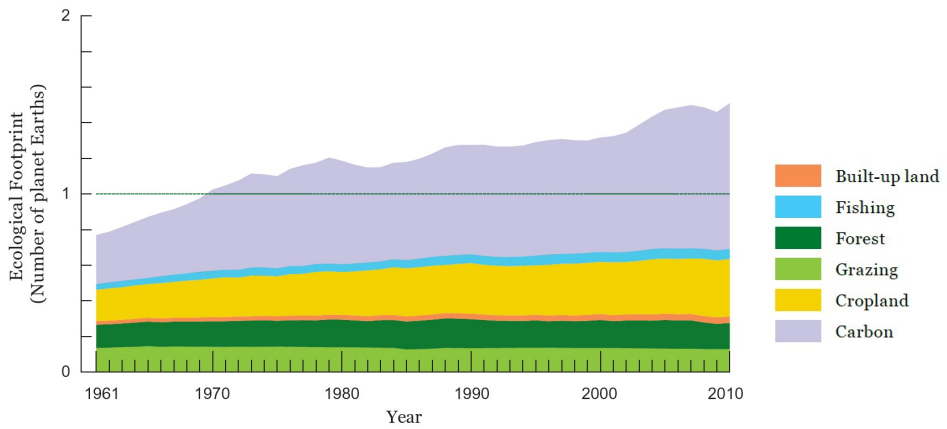
[4] Kraussmann et al., The global metabolic transition 1950-2010, Global Environmental Change 26 (2014) 87–97
[5] PNUE, Waste: Investing in energy and resource efficiency, 2011
[6] UN Habitat, State of the World Cities, 2013
[7] Homi Kharas; Centre de Développement de l'OCDE, The Emerging Middle Class in Developing Countries, 2010





Projection of the evolution of the middle class (2000-2030) and their consumption expenses (2009-2030)
Source: Development Centre at OECD (2010) and Robeco (2015)

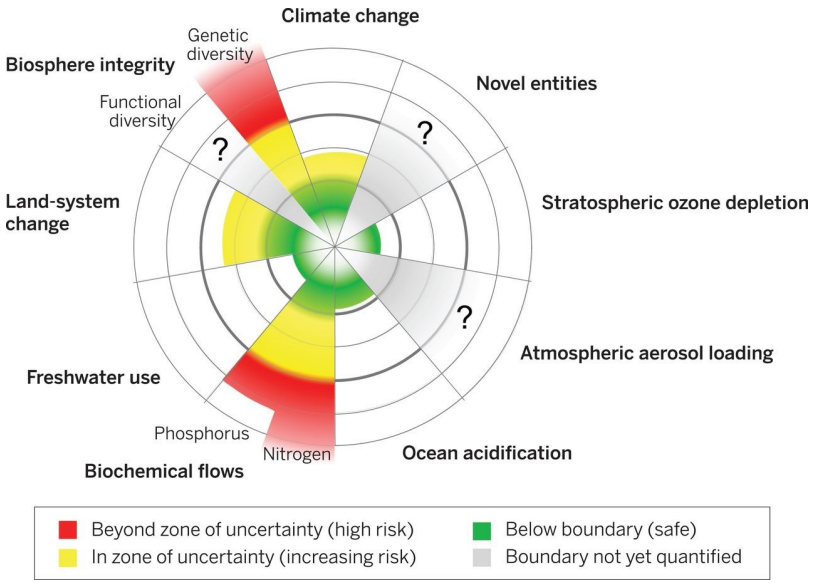
There are multiple challenges posed by this evolution. In 1972, the Meadows Report for the Club of Rome gave an important wake-up call on environmental risks caused by the globalisation of the consumer society (use of water resources, increase of air pollution, pressure on renewable and non-renewable resources…).[8]
In 1992, the media coverage of the Brundtland Report[9] helped to raise awareness within the international community regarding the Earth's limits, the interdependence between economy, ecology and Human development, and to spread the concept of 'Sustainable Development'.[10]
Since then, an increasing number of reports have confirmed that human activities accelerate the depletion of natural resources and ecosystems that our economy and living conditions rely on.[11]
The ecological footprint of our production and consumption models exceeded the regeneration capacities of our Earth since the 1970s and the situation is still worsening (see below).[12]



Global ecological footprint between 1961 and 2008
Source: WWF (2014)

[8] Meadows et al., The limits to Growth, Report to the Club of Rome, 1972
[9] Report of the World Commission on Environment and Development: Our Common Future, 1987
[10] Le Développement Durable est défini dans le rapport Bruntland comme « un développement qui répond aux besoins du présent sans compromettre la capacité des générations futures à satisfaire leurs propres besoins »
[11] ONU, Rapport de l'Evaluation des Ecosystèmes pour le Millénaire, 2005
[12] WWF, Rapport Planète Vivante, 2012

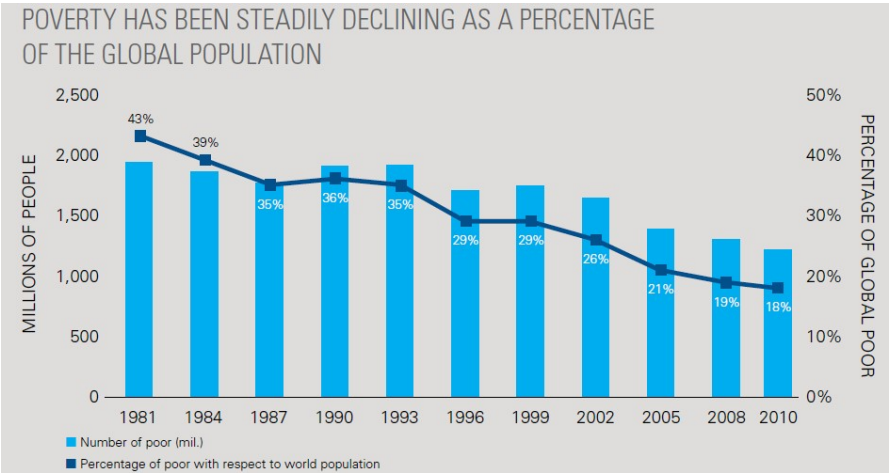
Our lifestyles lead us to reach or even exceed several critical environmental thresholds, the tipping points beyond which irreversible and exponential changes are generated on ecosystems or natural regulation mechanisms (see diagram below).[13]



Planet boundaries
Source: Rockström et al., (2015)

b) Unresolved or worsening social issues

Over recent decades, economic growth also led to a significant global reduction in the number of people living beneath the extreme poverty threshold (as set by the World Bank): there were 1.2 billion people in 2010 against a little less than 2 billion in 1981 (see diagram below). [14]

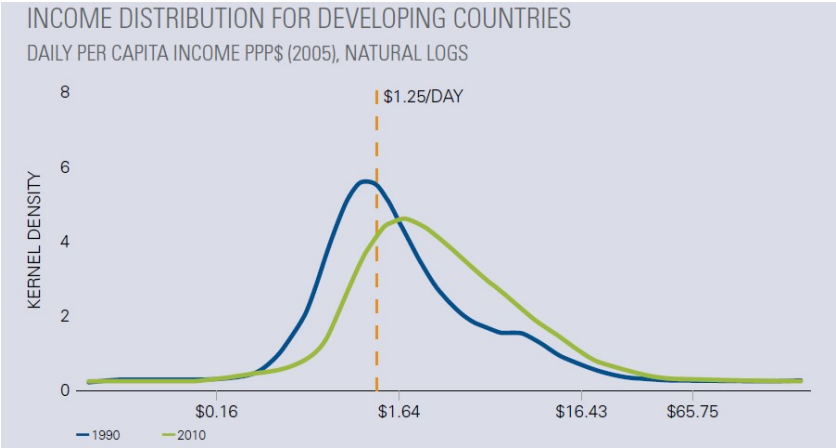


Number of people earning less than 1.25 USD / day (and percentage within the global population)
Source: World Bank (2014)

Nevertheless, this figure should be put into perspective: data from the World Bank show that for the most part, it is only a 'sliding' effect. Most of the people who exited extreme poverty

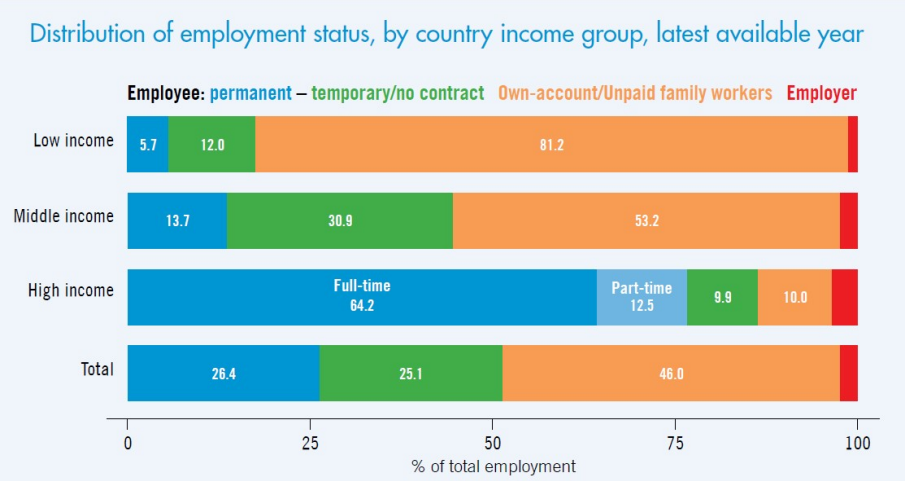
[13] Rockström et al., Planetary boundaries: Guiding human development on a changing planet, Science, 2015
[14] World Bank, Prosperity for all: Ending extreme poverty, 2014

since 1990 still earn less than 2 USD per day in 2010, which remains below the poverty line set by the World Bank (see diagram below). [15]
Moreover, this number is certainly under-estimated as the income indicator does not allow us to identify the different characteristics of the whole population affected by poverty and social exclusion. [16]



Evolution of the income distribution in developing countries between 1990 and 2010
Source: World Bank (2014)

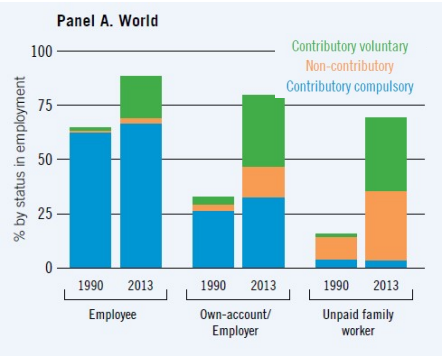
Beyond the issue of income, studies from the International Labour Organisation show that several problems of employment and labour conditions had a tendency to aggravate since the late 1990s.
First of all, stable permanent employment is decreasing all over the world: it is less and less prevalent in advanced economies, whilst very-short term contracts and irregular working schedules have become the norm in emerging economies; and informal employment is still the norm for developing economies (see diagram below). [17]

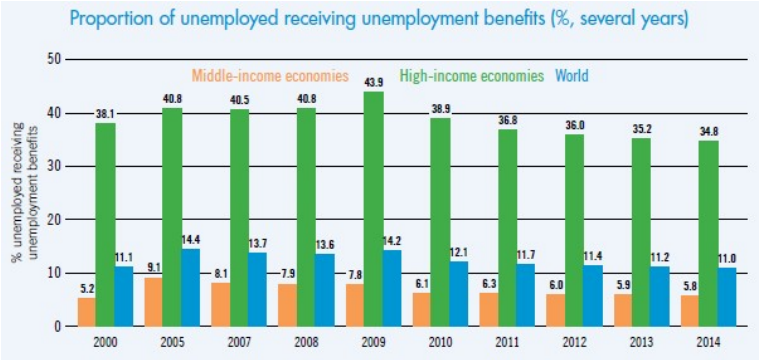


Distribution of Employment status by country income group
Source: International Labour Organisation (2015)

Regarding welfare and social protection systems, even if substantial progress concerning the retirement pension coverage rate is visible since 1990, the number of unemployed people benefiting from an income support has been constantly decreasing worldwide since 2007 (see diagram below).

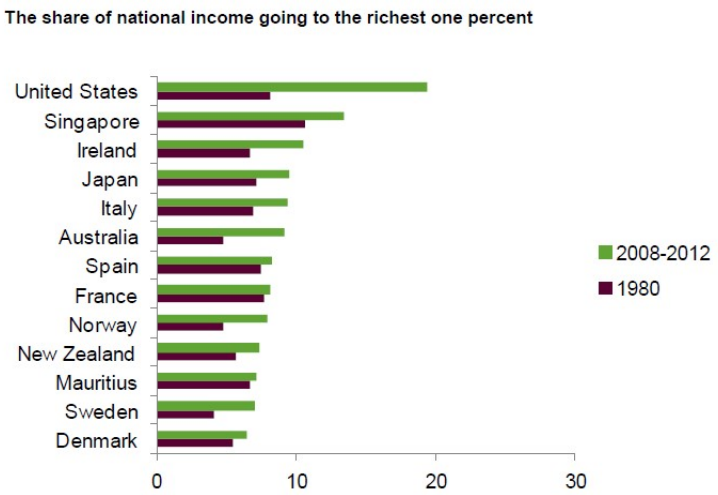
[15] World Bank, Prosperity for all: Ending extreme poverty, 2014
[16] United Nations Development Program, What is Poverty? Concepts and Measures, 2006
[17] Organisation Internationale du Travail (OIT), Emploi et Questions Sociales dans el Monde, 2015





Evolution of the pension (1990-2013) and unemployment coverage rate (2000-2014) worldwide
Source: International Labour Organisation (2015)

These evolutions foster growing and widening income inequalities: as the IMF points out, 0,5% of the world population currently own 35% of the economic wealth.[18]
The deepening of inequalities concerns most of the countries in the world as shown by the latest report issued on this subject by Oxfam (see diagram below). [19]



Evolution of the GDP share owned by 1% of the richest in different countries
Source: F. Alvaredo, A. B. Atkinson, T. Piketty and E. Saez, (2013) 'The World Top Incomes Database'

3. Evolution of value chain regulation

As detailed in the previous chapter, social and environmental issues exacerbate and call into question the sustainability of our societies, especially as States, formerly sovereign and regulators within their own territories, are less and less capable of meeting these challenges.

[18] FMI, Rapport sur la Mondialisation et les Inégalités, 2007 – FMI, 2013
[19] Oxfam International, Working for the few: Political capture and economic inequality, 2014

But this has not always been the case: at other times in the past, States have managed to supervise the economy and its impacts, as shown by the key examples of agriculture and textiles.
Nevertheless, over the last 30 years, their legitimacy and capacity to regulate have kept diminishing in the face of the emerging globalised value chains and the success of neoliberal thinking among political elites.

a) Historical regulation attempts by the States

Appearance of Nation-States and regulation of the economy

The 17th century can be considered as the starting point of public regulation, closely linked to the emergence of the first sovereign Nation-States[20] that progressively prevailed as society's organising principle in Western countries since the Treaty of Westphalia (1648)[21].

These emerging institutions supported the first 'economic regulation' policies, which contributed to strengthening their legitimacy on their own territories:

- In their colonies, the Nation-States developed mercantilist systems aimed at controlling strategic commodities through commercial monopolies on key products (textiles, wine, etc.).
- On their national territory, they focused on land issues: inspired by the thinking of the Physiocrats, they founded their models of society on private property.

During the 19th century, States started to implement the liberal policies promoted by the classical economists. By easing restrictions on trade (lowering customs duties, lifting prohibitions…), they initiated the first globalisation movement of merchandise flows. At the same time, they generalised the use of gold as the reference value within the framework of a financial liberalisation policy, which allowed the globalisation of capital flows without the risks related to exchange rate fluctuation.[22]

The beginning of the first World War stopped this dynamic in its tracks and the violent economic crisis of the 1930s rattled the leaders of liberal thinking. New State leaders with interventionist programmes were elected, as for example F. Roosevelt and his New Deal in the United States, from 1933. In the aftermath of World War 2, the economic order was set by the United States through two main treaties: Bretton-Woods (1944) that regulated monetary relations and GATT[23] (1946) that set about ending protectionism and bilateralism.
These policies were based on the ideas developed by J. M. Keynes, who believed that only the Welfare State, by combining economic intervention, wealth redistribution and social assistance, was able to compensate for market insufficiencies and to guarantee social cohesion and well-being in the long run[24].
This new economic order even inspired the adoption of the first guidelines for transnational companies by the OECD in 1976 and the following year the "Tripartite declaration of principles concerning multinational enterprises and social policy" published by ILO.[25]

Agriculture, an historical example of sectoral regulation by States

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[20] L'Etat-nation est un concept juridique qui émane du droit « westphalien » et peut être défini comme une communauté dotée d'un territoire d'exclusion défini par des frontières physiques et pourvu de compétences spécifiques qui définissent sa souveraineté.

[21] Les Traités de Westphalie (1648), qui ont mis fin à la guerre de Trente ans, ont affirmé la souveraineté des États et le principe de non-ingérence à l'intérieur de frontières précises et reconnues par le concert des Etats-Nations.

[22] D. Rodrik, The Globalisation Paradox: democracy and the future of the world economy, 2011

[23] General Agreement on Tax and Tariffs

[24] J.M. Keynes, La Fin du Laissez-Faire, 1926 et Théorie générale de l'emploi, de l'intérêt et de la monnaie, 1936

[25] O. de Schutter, Contrôle des sociétés transnationales : bilan d'étape, Revue Projet n°353, juillet 2016

The sector with the longest history of regulation is agriculture. States have been intervening for more than two centuries in this sector because of its strong specificities, amongst them:

- The dependence of farmers on climate fluctuations (the constitution of stocks has been the main historical lever used to protect agriculture from the vagaries of the climate) and financial resources, and the instability of the markets where farmers sell their production (the agricultural sector is characterised by risk aversion, in particular in financial terms).
- The low flexibility of demand: on one side, demand cannot be artificially created beyond a certain point, and on the other, insufficient supply can lead to periods of malnutrition and even famines on a regional or national scale.

In order to overcome productivity problems and famines that may lead to farmers' uprisings, the first framework policies led by Western States focused on price control for food items, in particular grains.
From the mid-19th century on, agricultural policies became a means for States to include farmers within production chains in order to feed the cities. Governments launched a capitalist transformation process of the agricultural sector at the root of enormous productivity gains, but also numerous agricultural job losses.[26]

This dynamic was extended and amplified by the agricultural policies developed by the United States from the 1930s (Agricultural Adjustment Act) and in Europe in the aftermath of World War 2 with the Treaty of Rome (1957), which is at the root of the first European policies organising the common market for six agricultural products, that in turn gave birth to the first European laws on agriculture (1960-62).

Given that agricultural production was not sufficient, most States developed a 'productivist' approach for agriculture: mechanisation was highly encouraged, as well as the extension of farm-size through the regrouping of fields. This period was also characterised by the search for vertical integration of producers, in particular within the newly emerging supermarket networks. Agriculture had come to be considered as a lever for global economic development.

In the meantime, States also developed regulation aiming to control agricultural prices by establishing buffer stocks and export quotas, in particular within the framework of the European Common Agricultural Policy, or, on a larger scale, within international organisations for coffee, cocoa, rubber and cane sugar.

A partial waiver to free market principles for agricultural, forest and fisheries products even came close to being adopted in the framework of the Havana Charter (that came out of the United Nations Conference on Trade and Employment in 1948).[27]

[26] T. Pouch, L'agriculture entre théorie et histoire ou qu'est-ce qu'une politique agricole ?, Economie Appliquée, 2002
[27] T. Bréger et F. Collart Dutilleul, Droit commercial : pour une exception alimentaire, Revue Projet n°353, juillet 2016

The textile value chain: cradle of the very first labour Laws

Another pioneering sector for State sectoral regulation policies is textiles, with the emblematic struggle against the 'sweating system' that emerged at the end of the 19th century.

In this system, the entrepreneurs managed to bring together workers in home-based workshops and made them work very long hours to produce fabrics that would be sold with high profit margins.[28]
This system was born in the East End neighbourhood of London where hundreds of miserable textile workshops were hidden behind just sixty well-maintained workshops; this model was quickly spread across the United States and France during the second half of the 19th century.

Three main criteria used to define a sweating system were[29] :
- An unhealthy environment,
- Excessive working hours (with a remuneration system based on piece-rate work, the labourers working 14 to 18 hours a day to produce more and earn a living wage),
- Starvation wages (for example, workers in Philadelphia earned 2 dollars per week against 3 to 4 dollars for a worker in an industrial factory).

In practice, the sweating system was a regime under which the boss could coordinate the manufacture of products through a contractor who would act as an interface between his orders and the workers, the latter producing either from home or in small workshops. According to observers at the time, if the impoverishment of the worker was not anyone's wish, it was the consequence of everyone's behaviour: manufacturers, owners, consumers, etc.[30]

Actors from civil society tried to jam the system by making the value chain actors accountable and responsible: owners, intermediaries, manufacturers and in the end the consumers. Buyers' leagues and the first labels were developed to make items produced in decent conditions available for consumers. [31]

But more importantly, it is a wide legal arsenal that enabled the gradual decline of the sweatshop system in Europe and North America.

Even if at first, the United Kingdom, France and the United States were divided over whether to support or oppose the legislation route, one by one they prohibited 'intermediation' between capital and labour in the early 20th century, then proceeded to implement sectoral laws: prohibiting home-working, obliging any collective labour to take place in an officially registered manufacturing workshop, etc. [32]

This wave of reforms finally led to complete legal regulation of the sector: limitation of the number of working hours per week, minimum wages, wage equality, sectoral collective bargaining and contracting party's agreement (manufacturer or general manager…).[33]

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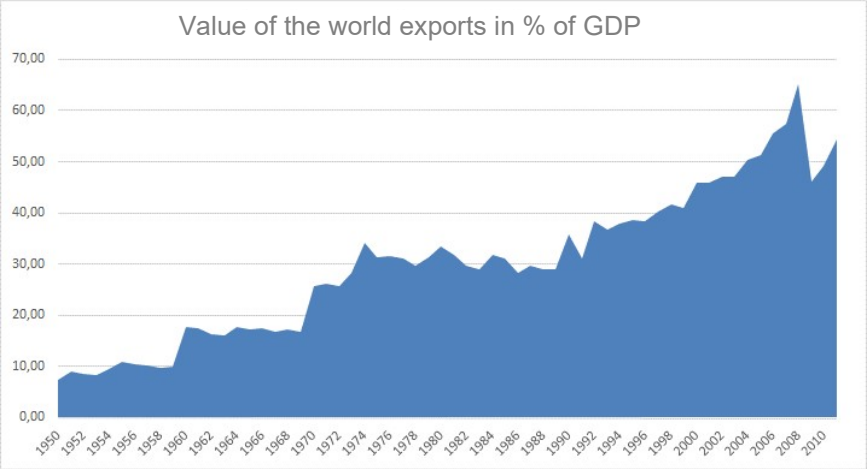
[28] P. Barraud de Lagerie, Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop, Sociologie du travail 54, 2012
[29] P. Barraud de Lagerie, Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop, 2012 op. cit.
[30] N. Auten, Phases of the Sweating System in the Garment Trades of Chicago, American Journal of Sociology, 1901
[31] M-E Chessel, Aux origines de la consommation engagée : la ligue sociale d'acheteurs (1902–1914). Vingtième siècle 77, 95–108, 2003
[32] P. Barraud de Lagerie, Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop, 2012 op. cit.
[33] P. Barraud de Lagerie, Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop, 2012 op. cit.

b) Decline of State regulation policies

From the 1970s, the dynamic of globalisation and trade liberalisation initiated by the governments of several powerful economies, and inspired by a renewal in liberal thinking, caused profound disruptions and seriously called into question existing public regulation systems.

Trade liberalisation and globalisation of the economy

Since the first oil crisis in 1973, State regulation policies have been increasingly questioned and lost ground to the revival of the 'laisser-faire' way of thinking[34]. The major reform of the Bretton-Woods agreements led to the generalised deregulation of currencies and exchange rates. The lowering of customs duties set by the GATT favoured a new high in trade globalisation, enabled by capital market liberalisation.
International trade now accounts for more than 55% of world GDP, against 25% in the early 1970s (see below).



Value of the world exports (percentage of GDP)
Source: BASIC, based on data from Penn World Tables (2015)

This evolution led to a geographic dispersion of economic activities: the conception process, production and commercialisation of products and services are now fragmented and relocated on a global scale. This was a profound reconfiguration of the national and vertically integrated value chains[35] of the 'Fordist' economy. [36]

Most economic sectors are now directly or indirectly interconnected through global value chains and international markets, for the supplies of raw material upstream as well as the commercialisation of final products downstream. The economy has freed itself from the national space to organise itself in an autonomous way at the global level. This reconfiguration enabled the emergence of new economically centralised and socially fragmented ensembles that have been called global production chains or global value chains.[37]

[34] cf. le monétarisme développé par Milton Friedman

[35] Les termes « filière » et « chaîne de valeur » désignent à la fois un ensemble d'activités économiques interdépendantes et un groupe d'agents économiques liés « verticalement » depuis la production de matière première jusqu'à l'élimination finale des produits.

[36] F. Palpacuer, Firme--réseau globale et réseaux transnationaux d'ONG : vers un nouveau mode de régulation », 2008

[37] F. Palpacuer, Firme--réseau globale et réseaux transnationaux d'ONG : vers un nouveau mode de régulation », 2008 op. cit.

Many economic value chains are now subject to the wishes of a handful of transnational private actors – retailers, big brands, sometimes processors or traders – that determine supply geared towards the presumed needs of consumers and organise 'supply chains' accordingly. They have managed to capture a growing share of the total economic value, by controlling the required information for the proper functioning of globalised value chains (price trends, logistics, quality standards…).[38]

Almost 50,000 transnational companies own 450,000 subsidiaries and employ more than 200 million people worldwide[39]. In the course of the last 30 years, the number of companies has been multiplied by ten, and the consolidated turnover of the top 10 transnational companies currently exceeds the Brazilian and Indian GDPs combined.[40]

These economic actors are henceforth able to elude State regulation mechanisms that are still linked to the national perimeter and are able to relocate their sourcing where these are the weakest, as illustrated by the examples of the agricultural and textile sectors. [41]

The dismantling of agricultural regulation policies

Since the 1980s, because of their success, the regulation policies of the main agricultural countries, in particular the European CAP, started to produce surplus which entered more and more in competition with agricultural production from developing countries and created distortions on the international market, especially with the help of export subsidies. It was the starting point of a major reorientation of agricultural policies and international trade agreements.[42]

The emergence of new producing countries (especially in Asia) caused increasing issues of agricultural overproduction, the collapse of international commodity organisations (coffee, cocoa…) and the progressive dismantling of price stabilisation mechanisms (quotas and stocks) in developing countries as well as in Europe and the United States.

State intervention in agriculture is now considered as a threat to economic growth. Regulation should be limited to compensating agricultural activity as a service (see the 1994 Marrakech agreement that for the first time includes agriculture in the GATT).

As a counterpoint, the main economic actors are increasingly initiating private rules that they manage to impose on other actors within sectors and value chains (safety and sanitary standards, codes of conduct…).

These private standards raise issues concerning the compatibility of such self-regulation mechanisms with competition law, the risks of conflicts of interest, the less binding nature of - and lack of sanctions in - these private mechanisms compared with State regulation…

The resurgence of sweatshops and an impasse in textile chains

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[38] R.W. Cotteril, 'Dynamic Explanations of Industry Structure and Performance', 2000, op. cit.

[39] http://www.ilo.org/global/topics/employment-promotion/multinational-enterprises/lang--fr/index.htm Organisation Internationale du Travail (OIT), consulté en janvier 2016

[40] http://www.lemonde.fr/idees/article/2012/04/23/de-l-impunite-des-multinationales_1688431_3232.html#RBYrqBfVK741BGQW.99 Antonio Manganella (CCFD) et Olivier Maurel (professeur associé à l'IAE G. Eiffel), consulté en janvier 2016

[41] A. Zacharie, Mondialiser les normes sociales et environnementales, Revue Projet n°353, juillet 2016

[42] Fondation Schuman, L'Europe et la crise du lait, 2009

The term 'sweatshop' reappeared in the 1980s following the relocation dynamic of textile workshops in developing countries. These 'offshore' sweatshops are integrated factories from which purchasers located in developed countries can buy directly finished goods.

For more than 20 years, activist organisations have been gathering information about these factories, demonstrating that nothing has changed since the Victorian era: starvation wages, excessive working hours, insalubrious working conditions – but also arbitrary disciplinary mechanisms and prohibition of organising trade unions[43]. They launched many awareness and advocacy campaigns targeting the big brands and their accountability (in particular, the Year of the Sweatshop in 1995-96 in the United States and urgent calls from the Clean Clothes Campaign in Europe since the 1990s).

Nevertheless, the attempt to regulate offshore sweatshops through the intervention of the brands appears to be way more complex today than it was in the 19th century, because they cannot be held legally responsible and also because the internationalisation of subcontracting allows them to escape the legal perimeter of the States where their headquarters are located. Weak labour laws in the countries where the sweatshops are located and the lack of monitoring/inspection and sanctions by local authorities make the situation even worse.

Unlike the activist movement of the previous century, current actions are mostly conducted by non-profit actors that ask for companies to exercise their social responsibility, basing their actions on reputational and commercial pressures.[44]

However, the fact that sanctions against companies are not regulated in law, but are rather left to the citizens in a vague way (through their activism and their buying choices) raises the question of the capacity of governments to play their role of public intervention, at national scale and, above all, at global scale.

Questioning the role of the State

The evolutions previously detailed reflect an ever-widening and global movement reconfiguring the role of the State around two main approaches:

- On the one hand, national governments can no longer have recourse to legal instruments in order to regulate their globalised national economies and so they focus on improving the attractiveness of their territories: it is the emergence of the 'Entrepreneur State'. This dynamic leads to open and intense competition between States (but also between regions or cities) to attract economic actors[45]. Constantly looking for economic growth, and under the pressures of companies which are themselves submitted to the requirements of profitability, States are less and less capable of imposing – or of collectively agreeing on – social and environmental standards fit for tackling the challenges we face[46].
- On the other hand, States are moving away from an interventionist approach and are seeking to develop new relationships with economic actors: the State positions itself as an arbitrator between stakeholders, thereby acknowledging the market's supremacy. The rule of law should not be a constraint any more, but something that private actors support. These private actors are seen as holding their own power to sanction and as capable of being a substitute to the State. The regulation approach is then left aside to the benefit of the 'governance' and 'mediator State' approaches promoted by the Public Choice School of Chicago.

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[43] T.J. Radin, M. Calkins, The Struggle Against Sweatshops: Moving Toward Responsible Global Business., 2006

[44] P. Barraud de Lagerie, Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop, 2012 op. cit.

[45] J-P. Le Galès, Régulation, Gouvernance et Territoire, Droit et Société, vol. 24, 1998

[46] By way of example, the pressures on the Ecuadorian government from exporters opposed to minimum prices for banana producers or on the Bangladeshi government around factory safety and wage levels in the textile industry.

The crisis over the role of the State has ended up affecting its sovereign powers, even the national currency which now has to conformed to market imperatives, whereas it used to be the historical and emblematic control mechanism of the economy by public authorities. [47]
At global scale, trade law, thanks to its flexibility and fast implementation, has acquired a de facto primacy over other Conventions signed by States (the UN Declaration of Human Rights, Conventions on environmental protection, economic, social and cultural rights, etc.). Trade law has gained indisputable legitimacy with the creation of the Dispute Settlement Body of the WTO and the multiplication of bilateral trade agreements. [48]
This reconfiguration has led to more flexible governance models – or so called 'soft law' - that have spread widely across the economy, raising serious questions over their capacity to deal with the tensions and resource depletion issues that arise.

c) The limits of self-regulation

In this context, codes of conduct appeared as new mechanisms for regulating the economy which are favoured by both the economic actors and States.
Historically developed within several professional sectors in order to formalise required behaviours (as for example the Hippocratic Oath or the deontology codes for journalists and lawyers)[49], codes of conduct can sometimes be the basis for court decisions (for example the well-known "Arrêt Erika" of the French Court of Appeal). Nevertheless, in most cases, these self-regulation mechanisms tend to replace public regulation which is perceived as too costly. However, their limits have been pointed out in times of crisis (as shown by the recent tragedy of the Rana Plaza).
To mitigate these insufficiencies, the concept of multi-stakeholders' initiatives have emerged in the past 20 years and have become one of the most widely used mechanisms.

Multi-stakeholders' initiatives aim to articulate the interests of both economic actors and civil society organisations. They focus on promoting best practices and sometimes propose sanctions over the breach of international norms (even if, in practice, they struggle to take action against violations of human rights, or of social and environmental laws). They can also produce collateral and non-desired effects:

- The development of private standards means that associated certification systems little by little become de facto commercial barriers or marketing tools (as in the case, for example, of GlobalGAP or 'sustainable' palm oil).
- Through certification, private standards allow the dominant actors to increase their control over value chains and to shift their responsibilities and the supervision costs onto their suppliers. By doing so, they generate fierce controversies over the privatisation of public standards and regulation. [50]

Even though they include normative aspects, by referring to the framework of international law, these voluntary approaches mostly remain non-binding and are often considered as private initiatives by actors that freely choose to implement new management methods or 'best practices'.

More generally, a more systemic reading of this phenomenon enables us to rethink these initiatives within the context of pressures exerted within value chains: pressures coming from shareholders on the one hand to accelerate the globalisation movement, pressures coming from society on the other, denouncing the social exploitation and destruction of environmental resources provoked by these strategies, and questioning the social responsibility of the companies.

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[47] J-M Siroën, L'État-nation survivra-t-il à la mondialisation ?, 2004
[48] A. Zacharie, Mondialiser les normes sociales et environnementales, Revue Projet n°353, juillet 2016
[49] G. FARJAT, « Pour un droit économique », pp.117-120, PUF coll. *Les voies du droit*, 2004
[50] J Hatanaka et Busch ; 2008

In this context, 'soft law' approaches appear to be more constrained than spontaneous, resulting from political and social interactions outside the company's borders, from the production of raw materials up to the consumption of final products. [51]

So far, the increasing number of voluntary initiatives and multi-stakeholders' platforms have not demonstrated their ability to reduce systematically the social and environmental impacts generated directly or indirectly by economic activities, despite the often laudatory declarations made by their instigators and supporters.
A critical analysis of these initiatives highlights the impossibility for companies to voluntary take social and environmental measures that would weaken their competitiveness as they are embedded in fierce and increasing price competition on globalised and liberalised markets - unless the same exact rules apply to everyone the world over.
Moreover, instead of enhancing the development of public regulations, these voluntary initiatives often strive to replace them as they are perceived to be more efficient.

Even when the multi-partite initiatives emerged jointly from public authorities and companies, they are often insufficient, because they focus on only one dimension: economic, social or environmental. The initiatives that try to go beyond very rarely integrate the three dimensions, and practically never on an equal basis. This limitation prevents them from finding systemic solutions capable of addressing and resolving the interlocking challenges our societies face.

Nevertheless, these evolutions do not condemn the role played by public regulation to history, as there are no substitutes for the State in many cases. Even if they are increasingly questioned, States remain competent for preserving stability and internal security, for providing social protection and solidarity systems and, in the end, social cohesion.[52]
In this context, the law continues to be an essential 'external' control instrument of the economy, as well as a means that can be used by the economic actors themselves to build their own regulations[53].

This points the way to a wider approach to value chain regulation which would take into account all mechanisms, rules, institutions and standards that can help to limit negative social and environmental impacts from the production of raw material through to the consumption of final products and the disposal of any waste.

[51] F. Palpacuer, Firme--réseau globale et réseaux transnationaux d'ONG : vers un nouveau mode de régulation », 2008 op. cit.

[52] J-M Siroën, L'État-nation survivra-t-il à la mondialisation ?, 2004

[53] C. Bessy, T. Delpeuch et J. Pelisse, Droit et régulation des activités économiques, 2011 op. cit.

4. Innovative approaches to regulating value chains

a) Presentation of the five case studies investigated

Based on the previous findings, we chose to identify and analyse regulatory systems that try to address social and environmental challenges through an innovative articulation of voluntary approaches by private actors, with regulatory and legal tools put in place by States. The goal is to contribute to the thinking and foster concrete proposals on the regulation of value chains.

We have decided to focus on initiatives related to the agricultural sector, because of its long history of public and private regulation, and the large number of governance innovations that are emerging in this sector. We have selected initiatives that can illustrate a diversity of aspects:

- Stakeholders involved in their genesis: governments, NGOs, trade unions, private actors.
- Geographic scales of the initiatives: local, national, continental and international
- Levers used in practice: information sharing, exchange and negotiation, binding legal instruments.

Finally, we have also decided to include a regulatory initiative that can offer a counterpoint from a non-agricultural sector and which combines the features detailed above.

Based on these criteria, we identified and selected five 'hybrid' initiatives which are detailed in the table below. They do not claim either completeness or to be representative of all existing initiatives, but were chosen to aid reflection, since they seem to offer a good basis for inspiration and research. They are not always examples of 'best practices' and can help illustrate 'what not to do' in order to address the social and environmental challenges caused by global value chains.

Case studies		Characteristics
Market Information Service and Assistance to producers (Nkalo)	Since 2009, the NGO Rongead leads an initiative called Nkalo, which aims to improve the marketing of agricultural products in West and Central Africa. It aims at training, informing and advising all actors in the value chain (producers, processors and traders) on the market situation at the local, regional, sub-regional and international levels, so as to enable them to adopt relevant strategies.	- Agricultural sector - Initiated by an NGO (Rongead) - Regional scale - Main levers used: information, training
World Banana Forum	The World Banana Forum is a permanent platform that aims to promote an open dialogue between all actors of the banana sector on the social, economic and environmental challenges it faces (including issues of fair wages, costs of sustainable production and externalities). It has its roots in a process launched in 2005 by a coalition of civil society organisations representing the workers organised in trade unions, small farmers and consumers.	- Agricultural sector - Initiated by trade unions and civil society - International scale - Main levers used: information, exchange, negotiation

Public regulatory framework for the European dairy sector	The abolition of the milk quota regime was decided in 2008 following the CAP 'Health Check' process, and implemented in 2015. In order to prepare the sector for this new environment, a new set of instruments was developed under the 'European milk package' to improve cooperation between milk producers and dairy manufacturers, including the creation of a European Milk Market Observatory, the possibility of setting up producer organisations to negotiate collective contracts and the creation of futures markets.	- Agricultural sector - Initiated by governments - Continental scale - Main levers used: legislation, market instruments
Geographical Indications	In Europe, the products eligible for official recognition as geographical indications (GIs)[54] are very diverse, encompassing all the food sector (fruit and vegetables, meat, cheese, oil, wine...) as well as crafts. GIs often arise from the collective will of local producers and other economic actors in the chain who come together around common goals. The standard requirements are the cornerstone of their collective action and its sustainability; it is a tool for dialogue and negotiation between the various stakeholders in the sector.	- Agricultural sector - Initiated by private actors in the chain (producers, processors) - Local scale - Main levers used: legislation, certification, voluntary approach
Public regulatory framework for the French electronic waste sector	The French electrical and electronic waste sector was created in 2005 with the transposition of an EU Directive into the French Environmental Code. In practice, the producers of electrical and electronic equipment must be members of a Producer Responsibility Organisation (PRO) that manages the collection and treatment of waste on their behalf. PROs themselves are approved on the basis of a standard issued by the State and negotiated with a Consultative Commission of Accreditation which brings together all stakeholders in the chain and whose mission is to ensure the proper functioning of the sector.	- Waste sector - Initiated by public authorities in close links with all stakeholders - Local to national scale - Main levers used: legislation and voluntary approaches

b) Market Information Service and Assistance to producers (Nkalo)

The initiative 'Nkalo' led by Rongead addresses the profound asymmetry of information that marginalises small farmers in West Africa and undermines the necessary trust between actors in local and regional agricultural chains, in a context of continuing price volatility.

To achieve this, the initiative aims to improve the bargaining position and the incomes of producers by providing market analysis and predictive information on the evolution of prices for a set of local and regional food products. It also aims to improve the relations between actors in agricultural value chains and to support producer organisations and processors to develop relevant strategies.

[54] Geographical indications (GIs) are "Indications which identify a good as originating in the territory, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

A study evaluating the Nkalo Service conducted in September 2013 by the Abdul Latif Jameel Poverty Action Lab in partnership with the Paris School of Economics found that, in spite of the difficulty to assess the overall impact of the initiative: « *the main benefits of the N'kalô Service come from the reflection that is initiated among actors. Indeed, the training provided by N'kalô, and even the discussions fostered among the actors in the chain, enable producers to negotiate better, to get more accurate information on the market and to be more rigorous in their sales. In the longer term, the system helps generate more reliable incomes for all actors in the chain by promoting better marketing practices, and the better understanding of the sector and the sharing of information help reduce tensions and mistrust among actors*. »
Rongead estimates that the information provided by Nkalo enables producers to earn 20 to 100 euros more per year compared to their situation before the implementation of the service.

These results firstly come from the information provided to producers by the Nkalo service, but also from the 'multi-level' nature of that information that goes beyond price estimates and includes:

- At the micro level: the functioning of farms, farmers' strategies, business models, marketing channels, costs of logistics, the level of margins...
- At the meso level: existing services for the development of the sector, the state of both sectoral and inter-professional social dialogue, the level of demand and its evolution
- At the macro level: the business climate, the state of market demand and its historical development, the main obstacles for the development of the sector

The re-appropriation and use of this information by local farmers is not only the result of the diversity of communication channels used for its dissemination (paper newsletters, sms messages, emails...), but also the educational work and field support organised by Nkalo: field training sessions in villages (using "image boxes"), extension services directed towards empowerment and autonomy of decision of farmers...

In addition, the positive results achieved also come from the involvement and mobilization of grass-root collective actors, especially farmers' organizations. For instance, in Senegal, the majority of the Nkalo service is provided by the professional agricultural organisation members of the National Federation of Sesame Producers (FENPROSE), enabling the service to reach more than 6,000 farmers. Their involvement is critical for the sustainability of the initiative, both financially and in terms of local capacity building.

Another important factor contributing to the positive impact of the Nkalo system is its innovative approach and constant search for adaptation to ground realities. When deploying the initiative on a new value chain in West Africa, Rongead devotes a significant initial time to build sufficient experience in order to ensure that the information and advice delivered are relevant. To disseminate information on the widest possible scale, Rongead partnered with the telecommunications company Orange in Côte d'Ivoire and Mali to provide producers with relevant tools for rural areas, in particular a subscription service via a 'short number' to receive daily information by SMS on agricultural chains.

In Côte d'Ivoire, the Nkalo initiative has managed to generate a wider impact by linking its work with that of the State: through its work with the Council of Cotton and Cashew, Nkalo contributed to the establishment of a guaranteed minimum price that benefits all Ivorian cashew farmers across the country, structurally improving the level and stability of their incomes.

Nkalo's information newsletter on market conditions early in the season has helped the Ivorian State to set a consistent price that benefits more than 500,000 producers in the country. The Nkalo initiative also trained civil servants in Ivorian public institutions on the functioning of the sector and market analysis in order to increase their expertise and autonomy.

In other sectors and other countries, even though Nkalo has helped streamline the relationship between actors in agricultural value chains and to correct certain information imbalances, Rongead recognises that only similar public regulations enacted at national or inter-State level could manage to rebalance and control the market, while recalling the associated risk of political co-option.

Beyond this core issue of articulation with public authorities, the Nkalo system also exhibits other limitations.
First, the Nkalo initiative does not address the environmental issues of the agricultural value chains in which it operates. As for social issues, they are indirectly addressed through the improvement of the economic situation of farmers.
The Nkalo service also has a significant cost of implementation, both for market analysis which requires substantial initial investments (establishment of information-gathering network, historical data processing...) and for local support services to producers, which are more efficient but also more expensive.
Finally, even though the negotiating capacity of producers is improved through the Nkalo initiative, significant concentrations of power remain within the agricultural value chains in which it operates, perpetuating power asymmetries and their related negative impacts (for example in the cashew sector in Côte d'Ivoire, where more than 20% of all cashew nut production is bought by a single international group, Olam).

c) World Banana Forum

The World Banana Forum is a permanent platform created in December 2009, the Secretariat of which is entrusted to the FAO, and whose goal is to promote an open dialogue between all actors of the banana sector on the social, economic and environmental challenges it faces, and to work together on sustainable solutions.

The impact of the World Banana Forum is fairly recent, and mainly indirect.
Its creation is a first impact in itself, especially in the banana sector which had been plagued by conflicts and violence since its origin.
The preparatory process that led to the creation of the World Banana Forum required over ten years to enable the most marginalised actors - especially workers and small producers - to create a balance of power in the public debate with the large transnational banana companies, through an alliance of trade unions, small farmers' organisations and a platform of NGOs in the North.
This long process has resulted in a more balanced position for those who, 20 years ago, could not make their voices heard in the face of the prevailing economic actors of the sector (for example, the choice of the priority working themes of the Forum were influenced as much by the trade unions as by transnational companies).

Two other recent examples show the indirect impact of the governance framework provided by the Forum:

- The research work carried out within the Forum's permanent commissions has convinced a large UK retailer to commit to pay a price for bananas that covers the producers' costs of production and ensure the payment of decent wages for all workers of their local suppliers of bananas (plantations as well as smallholder organisations).
- The dialogue with the Ecuadorian government conducted within the World Banana Forum helped convince the former to:
    - enforce the payment of a guaranteed minimum price by exporters for bananas which has significantly improved the level and stability of producers' incomes;
    - raise the national minimum wage to a level designed to cover the cost of a basket of essential goods, thereby enabling a living wage for all workers in the sector.

Such results come from the exchange of information among stakeholders, complemented by studies commissioned by the Forum. More specifically, the sharing of objective diagnosis between actors in the banana value chain on economic issues (price and cost trends along the chain...), social issues (living wage, freedom of association...) and environmental issues (health, pollution, good agricultural practices…) helped develop recommendations and inspire changes in practices for both public and private actors (such as those detailed above).

These changes also come from the dynamic process and interactions initiated within the Forum, from the local level up to the national and continental levels.
This is particularly true for trade unions which articulate their discussions through the national and international networks they have built, as illustrated by the Latin American Coordination of Banana and Agribusiness Workers' Unions (COLSIBA) which brings together the majority of local unions at continental level, and which was one of the key success factors in the creation of the Forum, and key to its sustainability.
Since 2014, the World Banana Forum has also been exploring the creation of national platforms inspired by its model, in particular in Germany (instigated by civil society) and in Ecuador (instigated by the Government, in the continuity of its engagement in the banana sector)

The strengthening of stakeholders' capacity to participate, especially the most marginalised ones, is another key factor in the success of the Forum. Trade unions and NGOs taking part in the Forum provide capacity building and institutional support for workers' and small producer organisations in the South, so as to enable them to engage with other stakeholders at meetings and in the governance structures of the Forum.
This support also takes the form of financial support for training, union promotion and South-South experience sharing. These funds come from governmental cooperation, foundations and the own resources of trade unions and NGOs. The Forum's Secretariat is funded by membership fees, some of which are used to cover the costs of participation of less-resourced stakeholders in the coordination meetings and international conferences.

Although it has no legal binding mechanisms, the World Banana Forum also fosters wider impacts by generating a 'social pressure' that makes it difficult for a company member of the Forum not to comply with public regulation in countries of production.
In addition, the participation of governments in the activities of the Forum - as illustrated by the case of Ecuador – enables the development of new approaches and methodologies that can become standard practices for the banana sector.
For civil society, the Forum's long-term approach could combine new forms of multi-stakeholder governance, state regulation and collective bargaining enshrined (see diagram)

Complementarity between initiatives on living wages within the Forum
Source: A. Smith, Banana Link, 2015

Today, several civil society members of the Forum even foresee the possibility of proposing the negotiation of a multi-stakeholder agreement for the banana sector within the platform, with binding social, economic and environmental chapters. Such a comprehensive agreement

on a value chain at the international level would be the first of its type and would epitomise the alignment of actors initiated by the Forum.

On the issue of power relations, even if participants to the Forum engage in an effort of constructive dialogue, the challenge remains to build a culture of negotiation that recognises the divergence of interests and helps build agreements and trade-offs within the sector as a whole (as in the case of sectoral collective bargaining agreements).

Another major challenge is the final price of bananas which has dropped to such a low level in some countries that it no longer reflects the reality of production costs.
This is especially the case in Europe, the leading worldwide market for export banana: the price war between retailers is so fierce on bananas that Fairtrade fruit can be sold at loss in order to attract consumers into stores (the case in the UK). European consumers have become accustomed to paying their bananas on average 25% cheaper than apples during the growing season, even though the latter is the most consumed local fruit in the European Union, whereas bananas are produced thousands of kilometres away on the American and African continents.
This creates a growing economic pressure which is transmitted down to banana producers and workers, and which amplifies the dynamics of precarious working conditions and use of chemical inputs that are causing major negative impacts documented in the sector.

Eventually, large companies operating in the banana sector, including retailers, are locked into a system of head-on competition that they contributed to set up, which ignores the social and environmental costs generated on small farmers, workers and their communities.
The only solution appears to be the creation and implementation of collective standards for the entire value chain, but it would require that all public and private actors commit to comply with them for the sake of the long term sustainability of the sector.

d) Public regulatory framework for the European dairy sector

For the past twenty years, European governments have conducted a process of liberalisation of their agricultural sectors in general, and the dairy sector in particular. In a context of trade globalisation, Member States have chosen to dismantle existing public tools used to regulate the milk sector (intervention prices, milk quotas...), and to support instead the producers and processors in their efforts to improve their competitiveness and gain market shares on other continents, so as to benefit from the expected growth of worldwide consumption of dairy products, particularly in Asia.
The latter has not materialised as planned, and European farmers have been caught in fierce competition with foreign exporters of cheap milk powder in countries such as New Zealand and the United States. Milk producers find themselves exposed to a highly volatile world market whose profitability threshold is too high for the relatively smaller and less industrialised dairy farms in most European countries, with significant potential implications on the environment.
In 2008, the liberalisation process has created a deep crisis that affected the whole European dairy sector. In response, the Member States convened a ‘high level group’ to analyse the roots of the crisis and possible solutions to protect dairy farmers from the volatility of international markets.
The group acknowledged that, in the absence of public protection systems, the primary cause of the problems at stake was the imbalance of power and the lack of transparency between the various actors of the milk value chain (to illustrate, in 2008-2009, milk producers have seen their incomes fall while the margins of manufacturers and supermarkets continued to rise).

To resolve these challenges, a series of new instruments was adopted in 2012 as part of the 'Milk Package'. Its goal is to improve the cooperation between dairy producers and manufacturers via the establishment of a European Milk Market Observatory, the creation of futures markets and the possibility of setting up producer organizations to negotiate collective contracts and re-balance power relations in the industry.

Despite these mechanisms, instability and volatility have persisted. Milk prices temporarily recovered after 2009, reaching a peak in January 2014, then fell sharply in 2015 when milk quotas were removed, generating a new crisis in the sector and widespread protests in many European countries, especially in France. If the results are globally negative, the reform of the 'European Milk Package' nevertheless seems to have succeeded in resolving the issues at stake in several regions (in particular in Bavaria).

The European Milk Market Observatory, a necessary but insufficient instrument, has strengthened the capacity of the European Commission to monitor the milk market and to increase transparency in the sector by disseminating data on: production volumes, balance between supply and demand, production costs and market prospects, short term and mid-term outlook...
It also helped to initiate a dialogue between key actors in the EU-wide dairy industry by bringing together a stakeholder committee at regular intervals to review and enrich the Observatory's information. However, the Observatory has little impact at a continental level because of the abolition of the main public regulation tools: stocks, support prices, production quotas...
With respect to the futures markets, they remain underutilized and have almost no impact: the leading industrial players in the dairy sector do not show interest as they already benefit from substantial bargaining power and a high degree of influence over the entire industry.

In contrast with the policy implemented in Europe, the Canadian system for regulating the dairy sector is often cited as a key example because it has maintained mechanisms to protect farmers from price volatility and ensure the economic sustainability of the sector. To achieve this, it relies on two complementary bodies:

- The Canadian Milk Commission which sets an annual minimum price based on a detailed monitoring of costs of production discussed with stakeholders within the dairy sector,
- The Canadian Milk Supply Management Committee (CMSMC), a multi-stakeholder platform which negotiates and sets production quantities to meet domestic demand, based on the minimum price set by the commission.

This example shows the importance of both State intervention, and stakeholder involvement and dialogue in order to regulate agricultural sectors and help resolve their economic issues.
This is particularly true for the EU dairy policy whose benefits are only observable in areas where dairy farmers have a long history of consolidation in collective producer organisations, as is the case in Bavaria. These organisations are represented at the Länder level by a federation that has a strong bargaining power and which meets periodically with manufacturers to obtain better conditions, allowing them to take full advantage of the instruments of the 'European Milk Package'.

More broadly, the dairy policy of the European Union also illustrates the pitfalls of so-called 'universal' approaches.
Back in the 1980s, the pan-European quota system had been strongly inspired by France, which is one of the only countries that has implemented this mechanism to protect the diversity of its dairy farms (especially mountain farming), whereas most other countries used it to support the industrialisation of their dairy sector.
Confronted with the limits of the system and increasing criticism by Member States, the liberalisation of the sector was inspired by another specific model: the German milk producer

organization (as in Bavaria) which has a long history and strong bargaining power when negotiating with dairy manufacturers. The new policy appears very difficult to implement in many regions in Europe, particularly in France, where producers are much more fragmented and less organised, where discussions between actors of the value chain are not common, and where the actors have been used to relying on the government for conflict resolution and regulation of the sector.
Following the crisis that resulted from the liberalisation of the dairy sector, many actors highlight the bottleneck of a uniform approach given the diversity of dairy models within Europe; some advocate today for the development of dedicated platforms in each 'milk producing region' with greater flexibility to define their own regulatory mechanisms based on common principles defined at the European level.

Finally, the regulation of the dairy sector in Europe is a key example of an initiative focused solely on the economic dimension that proved detrimental to the social and environmental dimensions.
Financial support was granted on the basis of 'historical references of production', the largest farmers receiving the largest amounts, regardless of their environmental practices.
The strengthening of 'environmental measures' and of the financial support for organic farming is still insufficient to curb the sector's industrialisation trend and the related impacts it generates.
Meanwhile, the least unsustainable dairy models such as mountain farming and grass-fed cattle are struggling to survive in the context of the constant search for yields and economies of scale.

e) Geographical Indications

The OECD counts no fewer than 10,000 Geographical Indications[55] in the world, including more than 6,000 in Europe, each representing a specific local experience and innovative model of cooperation between actors of a value chain. Geographical Indications include a broad range of food and craft products (even if most are wines and cheeses).

Beyond local characteristics, this 'kaleidoscope' of initiatives form a global framework with shared principles.
At the origin of a geographical indication, there is often a collective will of local producers and other economic actors in the chain to come together around a common project and shared goals, in particular to find ways to escape the pressure on costs, and ensure the sustainability and authenticity of their products.
This collective and voluntary approach enables the structuring and promotion of alternative value chains by converging individual strategies of actors and developing cooperation within a given territory.
The GI standard is the cornerstone of the collective action; it is a tool both for dialogue and negotiation between the parties involved; its respect is essential to ensure the viability of the initiative.
The platform built by producers and other local actors to create the GI standard plays a critical role in guaranteeing its requirements and rules of governance; it is the main interlocutor of public authorities. This model is now strongly promoted by the European Union and is one of the main topics of disagreement between Europe and the United States in the Transatlantic Trade and Investment Partnership (TTIP) talks.

[55] Geographical indications (GIs) are "Indications which identify a good as originating in the territory, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

Among the many Geographical Indication value chains, the 'Comté' cheese sector in France has demonstrated its ability to address the economic, social and environmental challenges with which it was confronted. This is especially due to its governance and regulation mechanism which is one of the most elaborate examples among Geographical Indications.
This has been demonstrated in an impact assessment study conducted by the French Ministry of Agriculture over the period 1993-2003 comparing the value chain of 'Comté' cheese (which has a Designation of Origin) and that of 'Emmental' (without Geographical Indication).
These two cheeses originate from the same region in France and exhibit quite similar features from a production viewpoint. However, they have developed through very different models: multi-actor, participatory and oriented towards local development for 'Comté'; industrialised and oriented towards mass-consumption in the case of 'Emmental'.

The differences in impacts of these two value chains are very significant:

- At the consumer level: 'Comté' cheese is positioned as a high-value product and its price rose steadily between 1993 and 2003 while the 'Emmental' cheese has become a standardised ordinary product (55% is sold as grated cheese) whose price stagnated over the same period. In 2003, the price of 'Comté' cheese was 46% higher than that of 'Emmental'.
- The refiners (processors) of 'Comté' cheese have greater bargaining power vis-à-vis retailers than the processors of 'Emmental', thanks to the value they have been able to put on local specificities (a 'terroir') and the existence of a closer relationship with consumers. Between 1993 and 2003, supermarkets captured 50% of the price increase of 'Comté' cheese and 100% of that of 'Emmental'. In 2003, 'Comté' refiners sold their cheese at a price 24% higher than those of 'Emmental'.
- Milk producers also face very different situations: the increase in the value of 'Comté' has been passed down to farmers who sell their milk at a price 14% higher than their counterparts who supply manufacturers of 'Emmental'.
- The associated social and environmental impacts are very different:
    - The production of 'Comté' has not been relocated outside its historical region despite the difficult geographical conditions there. Production even increased by 3% between 1993 and 2003. By contrast, the production of 'Emmental' in Franche-Comté (its historical region) fell by 3.5% annually over the same period and has been massively relocated in the West of France where dairy farms are more industrialised (and where 70% of the 'Emmental' cheese was produced in 2002).
    - Rural employment is five times higher for each litre of milk collected in the 'Comté' value chain than for that of 'Emmental', and rural exodus in the 'Comté' region is half the figure in the rest of the region.
    - The operating rules for 'Comté' cheese require producers to respect traditional methods of production, enabling the region to protect its cultural heritage and attract tourists thanks to its reputation.
    - These rules for 'Comté' are considered to have led to lower environmental impacts than for 'Emmental': fertiliser use is on average 2.5 times lower in the 'Comté' area than in other dairy farms, and livestock is mainly grass-fed.

These positive impacts of the 'Comté' value chain are closely linked to its governance model based on a strong branch organisation, the Interprofessional Management Committee for Comté (Comité Interprofessionnel de Gestion du Comté - CIGC) whose purpose is to ensure the fair distribution of added value along the chain.
All decisions are taken unanimously by representatives of the three categories of stakeholders in the chain: farmers, processors and manufacturers. In terms of transparency, each of these three groups of actors communicate annually to the two others its average sales prices, a very unusual practice - possibly unique - within the food sector.

On this basis, the CIGC establishes annual agreements and may decide to limit the volumes of cheese produced in order to keep price levels and generate income stability.
Economic issues thus appear to be the 'engine of consensus building' within the General Assembly of 'Comté', enabling the sector to overcome the sometimes conflictual discussions between stakeholders and therefore ensure the long term sustainability of the sector.

Moreover, 'Comté' cheese, along with most other Geographical Indications in Europe, benefit from the key role being played by national governments. Public authorities are first involved to validate the specifications developed by the stakeholders of GIs and to give accreditation to the inspection bodies that verify compliance requirements on the ground, a critical role to ensure the credibility of the Geographical Indication.
In addition, States play a vital role to protect the names related to geographical indications against potential fraudsters (e.g. Parma ham produced in Mexico or coffee blends sold under the name 'Colombian Coffee').
Additionally, in most cases, governments authorise Geographical Indication actors to discuss price and volume issues without being subject to sanctions by competition authorities.

However, Geographical Indications' value chains are not without their limitations.
First, the specifications only rarely modify power relations within value chains.
If the case of 'Comté' cheese is often shown as a key example of more balanced relations between actors (farmers, processors and manufacturers), asymmetric power relations persist in many other cases of Geographical Indications, often to the benefit of manufacturers seeking to increase their profits without increasing their costs.
This is for example the case of 'Cantal' cheese in France where the processes listed in the GI specifications are essentially industrialised and standardised; as a result, cheeses are sold at the same price as those without GI because of the lack of particular local know-how that can be turned into value-added at consumer level.

Another limitation of many Geographical Indications' value chains is to focus primarily on economic issues. If the environmental dimension is also often present, it is not systematically incorporated as shown by the examples of 'Champagne' and many other wines where producers use high doses of pesticides as there are no constraints in the GI specifications. The higher prices obtained thanks to the Geographical Indication can even be seen to encourage farmers to use more and more.
The social dimension is most often left aside, in particular the question of equity: geographical indications sometimes generate tensions between the producers who are in, and the ones who do not have the financial means to join, or those excluded on the basis of entry criteria.
In the end, although the GI mechanism is founded on a very interesting basis, the generalisation of its principles to the entire agricultural production seems very hypothetical.

f) Public regulatory framework for the French electronic waste sector

The French electrical and electronic waste sector was created in 2005 with the transposition of an EU Directive into the French Environmental Code.

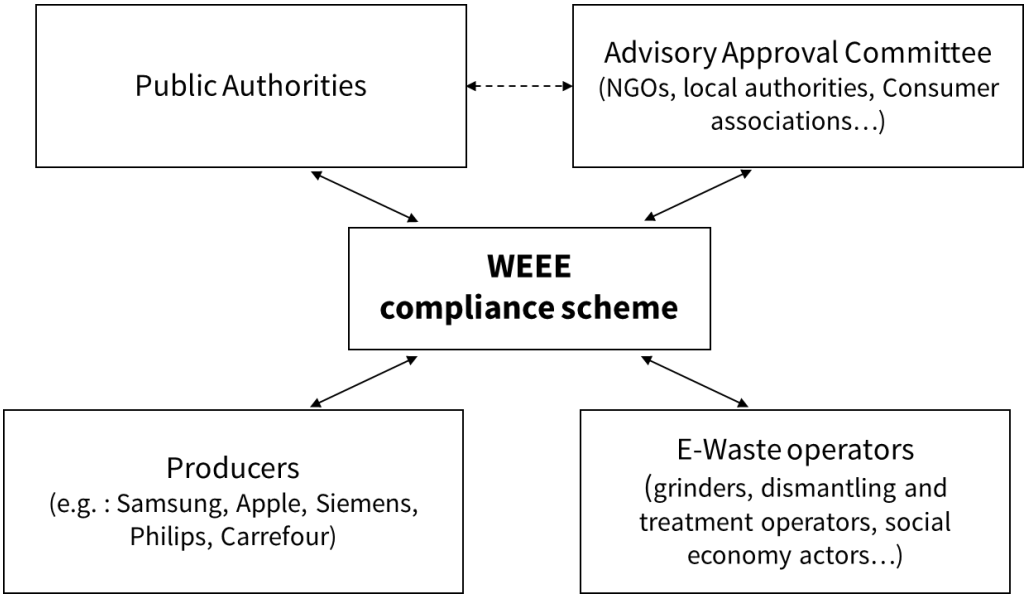
Its objective, decided at European level, is to « *contribute to sustainable production and consumption by, as a first priority, the prevention of waste electrical and electronic equipment (WEEE) and, in addition, by the re-use, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste and to contribute to the efficient use of resources and the retrieval of valuable secondary raw materials*. »

The specific way in which the French WEEE value chain is organised has helped develop a response to these issues. It generated increased rates of waste collection and recycling that

have reduced mineral resource consumption and limited the environmental impacts of waste management (over 450,000 tonnes of household WEEE were collected in 2014 in France, equivalent to 7 kg per capita and per year, compared to 20 kg of electronic waste generated annually per capita in the country).

These results were achieved thanks to the combination of three elements:

- The participatory definition of the sector's key performance indicators with stakeholders (rejected flows, treated and recycled volumes...) and their annual monitoring by the French public Agency for Environment and Energy Management (ADEME)
- The structuring of value chains (from the waste collection points up to the recycling plants at the regional, national and international levels) by a small number of Producer Responsibility Organisations (PROs) accredited by the French government,
- A participatory framework established by the government through the creation of a 'Consultative Commission of Accreditation' which brings together all stakeholders of the sector (producers of electrical and electronic equipment, distributors, recycling industrials, social economy actors, environmental NGOs, consumer and local associations) with the specific mission to ensure the proper functioning of the French WEEE value chain (see diagram below).



Participatory framework which enables the involvement of stakeholders in the French WEEE system
Source: Basic, 2015

It is the combination of - and synergy between - these three components, and more generally between the legal tools implemented by public authorities and the voluntary approaches developed by private actors, which have helped provide answers to the challenges faced by the WEEE sector.

For instance, the producers of electrical and electronic equipment were forced by law to join a Producer Responsibility Organization (PRO) that manages on their behalf the collection and treatment of waste. Four PROs are authorised in France, based on the requirements issued by the French government and negotiated with the stakeholders within the Consultative Accreditation Commission of the WEEE sector. These specifications define the economic and environmental commitments which have to be implemented by PROs, their results being monitored and published annually by the French Agency ADEME.

The Consultative Commission works closely with the State which has the ultimate power of sanction to not grant a licence to a PRO that does not fulfil its commitments.

Long considered a fictional weapon because of the potentially major consequences on the organisation of the sector, this sanction was in fact implemented for the first time in January 2015: the accreditation of the 3rd largest Producer Responsibility Organization operating in France, ERP, was withdrawn because of its insufficient commitments and potential conflicts of interest.

The experimental approach is another success factor that enabled the French WEEE regulatory system to overcome some of its challenges.
The piloting of the system was done through a local experiment conducted in the west of France (in Nantes) in the early 2000s; it gave rise to 'Ecosystèmes', the leading WEEE Producer Responsibility Organization. This empirical approach has fostered a culture of pragmatism that is found at all levels of the chain, from social economy actors (e.g. Ateliers du Bocage founded by Emmaus) to industrial recyclers.
Today, PROs continue to invest annually to improve the recycling rate of waste treatment processes and to increase the quality of recycling. This is especially true in the electronics industry that continuously generates new complex components that are potentially toxic and hard to recycle (e.g. brominated plastics...).
Additionally, Ecosystèmes, the leading PRO, conducts many field tests to improve the household collection rate of WEEE: collection points in distributors' outlets, temporary local collection points in big cities in partnership with social economy actors, security and traceability of WEEE in waste disposal sites to prevent looting, networks of local repairers of household appliances…

However, the French system for regulating the e-waste sector also faces a number of limitations and critical dilemmas.

Firstly, the sector is faced with the globalisation of value chains that generates insurmountable barriers.
This is especially true in the electronics sector, where the fast growing renewal of product lines sold at ever lower prices by manufacturers that are now all Korean or Chinese makes it almost impossible for them to reuse the e-waste discarded and recycled in Europe.

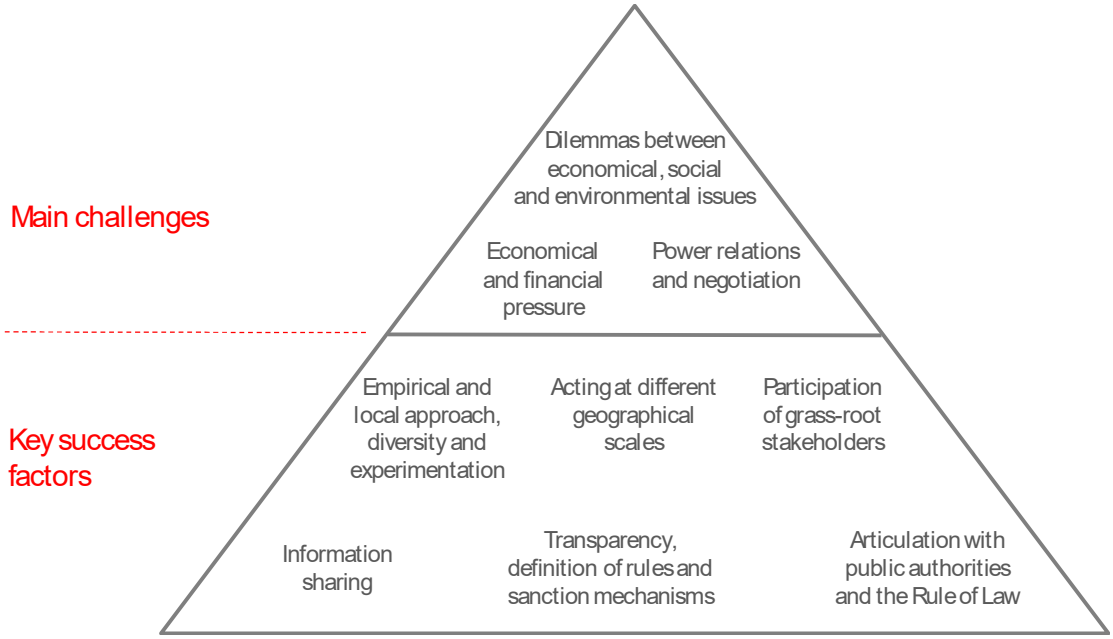
Moreover, behind the slogans of 'Circular Economy' promoted by leading actors, the French system set up to regulate WEEE does very little in the end to reduce the production of electrical and electronic equipment because it is more urgent to maximize the profitability of e-waste recycling plants which have required massive initial investments. The sector seems primarily oriented towards the building of large-scale collection and treatment systems that need to absorb ever more waste to become profitable.
Conversely, strategies to preserve mineral resources, reduce their consumption and increase the lifespan of the products are rarely implemented by leading firms of the electrical and electronic sector, except in cases where the law is more restrictive and sanctions higher. The fight against planned obsolescence, the promotion of reparability and reusability are thus relegated mostly to the background, and eco-design is still very marginal among manufacturers (especially in electronics).
This orientation is in deep contradiction with the issue of prevention and sobriety defined as a priority by the European directive and considered as the only way to attack the root causes of the major environmental problems related to electrical and electronic waste.

In social terms, the French government is one of the only ones in Europe that tries to promote a WEEE value chain model which is re-localised, which creates jobs that cannot be outsourced, are adapted to rehabilitative employment and whose working conditions improve over time.
However, this approach is increasingly questioned by the functioning of the market which exerts growing pressure on recycling costs that are considered too high, constantly looks for

economies of scale and generates increased competition between actors of the 'Social and Solidarity Economy' and conventional companies in the recycling sector.

g) Transversal analysis

The analysis of the five hybrid regulation initiatives detailed in the previous sections, and their ability to reduce social and environmental impacts, reveals two groups of issues: key success factors and major challenges (see diagram below).



Main issues related to the regulation of value chains
Source: Case studies conducted by Basic, Banana Link and Rongead

We can first identify common success factors that emerge in all of the initiatives studied and seem essential to achieving reduced negative impacts: information sharing, stakeholder participation (especially the most marginalized ones), articulation with governments, development of common binding rules, experimentation and work at different geographical scales.

The first key issue that emerges from all case studies is that of the collection and sharing of information within sectors and value chains.
This lever seems essential to (re-)build trust among stakeholders, draw up joint diagnosis and enable the participation of the most vulnerable and isolated actors, in a context where the information necessary to operate on the market is increasingly controlled by a small number of dominant players seeking to control the global coordination of value chains and to ultimately receive most of the benefits.

In addition, the capacity of regulation initiatives to meet the challenges they face seems related to their ability to define and enforce collective rules and apply sanctions, in coordination with public authorities. This lever seems essential to create a levelled playing field and common obligations that apply to all actors within a value chain - regardless of their size and influence - and generate positive impacts on territories. It is also one of the only ways to stop the race to the lowest bidder and to fight against the price pressure generated by global value chains.

Another key element that emerges from the various case studies is the importance of local stakeholders' participation and their ability to engage in regulatory dynamics and assert their voice in negotiation and consultation bodies. The degree of organization and participation of

stakeholders seems critical for the effectiveness of regulatory mechanisms and their relevance to ground realities.

Finally, the case studies highlight two other issues which are key to developing solutions adapted to the diversity of local situations while introducing more comprehensive structural changes:

- The need to take into account the different geographical levels at which economic, social and environmental issues have to be resolved,
- The adoption of experimental approaches to test new ideas and learn from successes as well as mistakes, before extending the scope of their implementation.

Furthermore, all the initiatives studied also face common challenges that prevent the systematisation of the positive impacts they have managed to generate in particular cases: the asymmetrical power relations within value chains, the pressure on prices generated by the globalisation of trade, and the dilemmas between the search for economic growth, social equity, respect for human rights and environmental preservation.

The development of effective solutions to regulate value chains and limit their impact seems to require the confrontation of diverging viewpoints, the negotiation of trade-offs and the rebalancing of power relations, so as to go beyond the ‘win-win’ mantra that often ends up in an agreement to the ‘lowest common denominator’ and addressing only the issues that the dominant actors are willing to discuss.

In doing so, the objective is to forge compromise within value chains that can preserve human, social and natural capital in the long-term at the expense of short-term gains and market pressures.

5. Questions to deepen and extend the reflection

Based on the analysis detailed above, we have identified a series of questions for discussion to help develop and consolidate initiatives for regulating value chains and respond to the social and environmental challenges that exist in these chains:

- How to regulate all the way along value chains, from the production of raw materials to the final consumption of the products?
- How to enable strong participation by all stakeholders, especially the most isolated and disadvantaged ones, and ensure the representation of different viewpoints?
- How to promote the building of shared diagnoses and collective action(s)?
- How to build mutual respect and trust between divergent value chain actors?
- How to design an operational approach from the local to the national and international levels to address the issues at stake?
- How to articulate actions across value chains with national laws and the prerogatives of national and local governments?
- How to create common rules that apply to all actors along value chains and sanction abuses?
- How to contribute to rebalancing power relations and promote collective bargaining within value chains?
- How to address economic, social and environmental challenges at the same time, and try to resolve the dilemmas posed by focusing on one or more of these to the exclusion of others?

It seemed important to us to be able to discuss this initial work with other individuals and organisations engaged in concrete attempts at value chain regulation, especially actors from civil society, trade unions, academics and institutions.

This is the main objective of the meeting which will be held at the end of August 2016 in Villarceaux? It aims to share, discuss and enrich the analysis detailed in this document and to discuss the relevance and possibility of forging new alliances between actors to build or strengthen concrete initiatives aiming at regulating value chains.