

Private Standards and Public Policy

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Outlines

- 1. Introduction**
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1. Introduction

- What are private standards?
- Examples on SPS-related and sustainability-related private standards
- Views divided between developed and developing countries
- How should public policy address the issue of private standards?
- What are the implications of private standards for global governance, particularly the WTO?

2. Private Standards: What Are They?

- Private (non-governmental) voluntary standards are developed and used by private actors—firms (producers, retailers), farms, NGOs, etc
- Private standards are not mandatory
 - ▣ Suppliers are not mandated by law or regulations to meet requirements set by private standards
 - ▣ Compliance with private standards is a choice to be made by suppliers
- In contrast, public (governmental) standards are “mandatory”, relying on laws, regulations, and institutions for implementation, enforcement, and sanctions

Case of SPS-related private standards

Committee on Sanitary and Phytosanitary (SPS) Measures, WTO

- “An SPS-related private standard is a written requirement or condition, or a set of written requirements or conditions, related to food safety, or animal or plant life or health that may be used in commercial transactions and that is applied by a non-governmental entity that is not exercising governmental authority”

Source: WTO, SPS Committee, “Summary of the Meeting of 15-17 October, 2014,” G/SPS/R/76 (2 December, 2014).

WTO's SPS and TBT

Sanitary and Phytosanitary (SPS) Measures

- A WTO member country allowed to take SPS measures to protect human life & health and food safety
- These measures must be based on documented and objective scientific evidence that is rationally related to the measures
- SPS measures implemented by a party should not create unjustified obstacles to trade

Technical Barriers to Trade (TBT)

- Facilitation of trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice

SPS-related private standards

- Set by private firms, national and/or international associations of retailers or producers, for products they produce or sell
- Can be based on national/regional/international standards
- Can include administration schemes, specific certifications and other requirements
- Retailers' food safety management systems that establish parameters which include food safety, social responsibilities, environmental preservation, labor requirements, etc
- Requirements can be pre-farm gate (growers and farmers) and/or post-farm gate (food packing and processing) and for retailers

Categories of private standards

Individual firm schemes	Collective national schemes	Collective international schemes
<ul style="list-style-type: none"> • Tesco Natures Choice • Carrefour Filière Qualité 	<ul style="list-style-type: none"> • Assured Food Standards • British Retail Consortium Global Standard-Food • QS Qualitat Sicherheit • Label Rouge • Food and Drink Federation/ British Retail Consortium Technical Standard for the Supply of Identity Preserved Non-Genetically Modified Food Ingredients and Products 	<ul style="list-style-type: none"> • EurepGAP • International Food Standard • Global Food Safety Initiative • ISO 22000: Food safety management systems • Safe Quality Food (SQF) 1000 and 2000 • ISO 22005: Traceability in the feed and food chain

Source: WTO, "Private Standards and the SPS Agreement." (G/SPS/GEN/746, 24 January 2007)

Case of sustainability private standards

- Importers and distributors of certain commodities have been promoting voluntary sustainability standards (VSS), often in a multi-stakeholder forum or “roundtable”, to develop standards prescribing the sustainable production (or harvesting) practices of commodities
- In turn, the plantations, farms or other enterprises, opting to use these standards, have been submitted to auditing by independent third parties with a view to having their production declared VSS-compliant
- Trade in VSS-compliant commodities (coffee, cocoa, palm oil, etc) has shown exceptional growth

3. Challenges for Private Standards

Positive aspects of private standards

- Facilitation of compliance with national and international standards by providing comprehensive guidance on achieving them
- Promotion of best practices on ensuring product quality and production process management
- Improved brand reputation, high price premia, and facilitation of access to markets and credits
- Ability to address emerging risks in a rapid manner, fill gaps, and pave the way for eventual adoption of international standards

Source: WTO, SPS Committee, “Report of the Ad Hoc Working Group on SPS-Related private standards to the SPS Committee.” G/SPS/W/256 (3 March 2011).

Concerns regarding (SPS-related) private standards

- Lack of a scientific basis for requirements
- Deviations from official governmental requirements (for example, for maximum residue limits)
- Multiplicity of standards and the lack of harmonization among them
- High costs of compliance and certification, especially with a multitude of standards
- Lack of transparency, consultation and appeal mechanisms
- Prescriptive, rather than outcome-based, operational procedures required by private standards, which disregards the concept of equivalence
- Unfavorable effects on SME producers, farmers and exporters in developing countries

Private standards for producers/suppliers

- When private standards become the industry norm, suppliers' choice is often limited
 - ▣ As a result, the distinction between private voluntary standards and “public” mandatory requirements can be blurred
 - ▣ By becoming a high-quality benchmark for SPS or sustainability, private standards can have some “public goods” nature
- There exist no specific rules or regulations over private standards
- The proliferation of standards schemes nationally and internationally can raise costs for some producers

Global value chains and private standards

- Some firms can successfully join the existing global value chains developed by multinational corporations (MNCs), but other firms cannot
- MNCs typically choose their supplier firms based on quality of products, delivery timing, and flexibility in addition to prices
- But these choices are usually made in an informal, non-transparent manner, making it difficult for many SMEs, particularly those from developing countries, to join such value chains
- Private standards are at least more transparent than the existing inter-firm relations in global value chains as requirements are stated in written form

Certification, auditing, verification

- Credibility of the standards can be judged by the quality of auditing and verification, conducted by third party certifiers (independent, arms-length accredited bodies), or a second party (a party with a user interest in the products, such as traders, retailers or consumers).
- Access to, including price and quality of, certification is one of the most debated issues in the area of voluntary standards
- Stakeholders are increasingly demanding that actual environmental *impact* of VSS be demonstrated and measured

Certification industry

- Auditing and certification are needed to bring credibility to the whole operation
- Independent third parties inspect a unit using a testing protocol and then pronounce in a pass/fail manner on whether a production unit is producing in conformity with the standard
- The certification industry, including the accreditation business, that sets the norms and decides who may audit and certify according to the norm in question, is sometimes accused of abusing its market power to exert anti-competitive practices (unfair pricing, less than thorough inspections and corruption)
- Big certifiers often refuse to share their testing protocols, thereby impeding a move to harmonization or mutual recognition of standards
- The government may take over inspection and certification (as in the case of Denmark and Finland on VSS) to set the fees for certification

4. Public Policy Implications

- What public policy measures are appropriate to maximize the potential benefits and minimize the potential costs of private standards?
- What is the role of public policy?:
 - ▣ How can public policy address some of the issues?
 - ▣ Should private standards be integrated with the SPS standards of the WTO?

Issues

- Market access
- Potential for fragmentation
- Consumer protection
- Development opportunities

Principles of public policy

As long as private standards reflect "legitimate" consumer preferences for safer and healthier products, or more environmentally sustainable modes of production, there is no reason for the public sector to intervene

- Public sector should remain neutral as long as private standards positively contribute to the welfare of consumers and society at large
- Public sector may take a negative bias to private standards when they damage consumer interests and/or limit market competition, by
 - ▣ encouraging transparency of private standards
 - ▣ intervening when market competition is limited

Market access

- Private standards going beyond public mandatory requirements
 - ▣ For example, lower maximum pesticide residue levels - MRLs
- Becoming *de facto* market access requirements
 - ▣ “Blurring” of private and official requirements
- For suppliers to have access to higher-priced markets, private standards often needed
- May limit competition in markets, particularly from foreign suppliers

Source: Gretchen H. Stanton, WTO's Work on Private Standards

Proliferation of standards

Proliferation of standards

- Overlap
 - ▣ GlobalGAP (EurepGAP) may require UTZ or Rain Forest Alliance, Fairtrade, and organic certification in parallel in order for the product to gain access to supermarkets

Solutions

- Equivalence—achievable through "benchmarking"
- Harmonization—difficult
- Mutual recognition—challenging but doable, by making the certification process more transparent
- Benchmarking—provides a means to compare requirements
 - ▣ For example, GlobalGAP (EurepGAP) has a process through which other schemes may be "benchmarked" against it

Consumer protection

Private standards may be regulated if:

- They are intended to create and/or reinforce monopoly power of firms
- They are driven by protectionist incentives to keep the local markets closed to foreign competition
- When noncompliance of standards becomes wide-spread (due to inadequate auditing and certification), thereby misleading consumers

The public sector may encourage the certifying industry to disclose information for market transparency

Development opportunities

- High costs associated with private standards
 - ▣ Costs of compliance
 - ▣ Certification costs
 - ▣ Costs of obtaining price premia
- Strategies for SMEs, small farmers, exporters in developing countries
 - ▣ Benefits from adopting higher-quality private standards
 - ▣ Correcting underlying hygienic problems, faster upgrading
 - ▣ Participation in value chains formed by MNCs and large agribusinesses contributes to the modernization of operations
 - ▣ Capacity building useful

Source: Gretchen H. Stanton, WTO's Work on Private Standards

5. Conclusion

- Provision of “international public goods” by the private sector, through private standards, should be encouraged; it complements and strengthens public-sector-driven global governance
- Public sector may remain neutral as long as private standards can positively contribute to the welfare of consumers and society at large
- Private standards are not subject to WTO disciplines although they may have some implications for trade

Conclusion (cont'd)

- However, the public sector may regulate private standards when they are judged to damage market competition and consumer interests
 - ▣ A need to ensure that firms adopting such standards and the certifying industry do not distort the markets and/or protect local markets from foreign competition
 - ▣ A need to ensure that firms also comply with the requirements to protect consumer interests
- There may be a case for crafting non-legally binding guidance on private standards developed by large firms in specific sectors
- Developing country firms, farmers and exporters are encouraged to join global value chains by adopting market-friendly private standards

Thank you
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