



The **E15** Initiative

STRENGTHENING THE GLOBAL TRADE AND INVESTMENT SYSTEM
FOR SUSTAINABLE DEVELOPMENT



**Private Standards—Implications for Trade,
Development, and Governance**

Vera Thorstensen, Reinhard Weissinger, and Xinhua Sun

September 2015

E15 Task Force on
Regulatory Systems Coherence

Think Piece

Co-convened with



ACKNOWLEDGMENTS

Published by

International Centre for Trade and Sustainable Development (ICTSD)
7 Chemin de Balexert, 1219 Geneva, Switzerland
Tel: +41 22 917 8492 – E-mail: ictsd@ictsd.ch – Website: www.ictsd.org
Publisher and Chief Executive: Ricardo Meléndez-Ortiz

World Economic Forum
91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland
Tel: +41 22 869 1212 – E-mail: contact@weforum.org – Website: www.weforum.org
Co-Publisher and Managing Director: Richard Samans

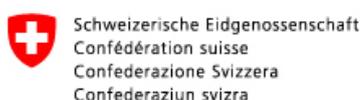
Acknowledgments

This paper has been produced under the E15 Initiative (E15). Implemented jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15 convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global and investment trade system for sustainable development.

For more information on the E15, please visit www.e15initiative.org/

The Task Force on Regulatory Systems Coherence is co-convened with the European University Institute (EUI) www.eui.eu/

With the support of:



And ICTSD's Core and Thematic Donors:



Norwegian Ministry of Foreign Affairs

Citation: Thorstensen, Vera, Reinhard Weissinger, and Xinhua Sun. *Private Standards — Implications for Trade, Development, and Governance*. E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. www.e15initiative.org/

The views and opinions expressed in this publication are those of the authors and do not necessarily represent the views of the organisations they are affiliated with, or the views of ICTSD, World Economic Forum, or the funding institutions. While they are based on consensus, not all policy recommendations may be equally supported by all the authors.

Copyright ©ICTSD, World Economic Forum, and the European University Institute, 2015. Readers are encouraged to quote this material for educational and non-profit purposes, provided the source is acknowledged. This work is licensed under the Creative Commons Attribution-Non-commercial-No-Derivative Works 3.0 License. To view a copy of this license, visit: <http://creativecommons.org/licenses/by-nc-nd/3.0/> or send a letter to Creative Commons, 171 Second Street, Suite 300, San Francisco, California, 94105, USA.

ISSN 2313-3805

ABSTRACT

Private standards have proliferated over the past few decades. These standards are produced by non-governmental bodies and entities addressing concerns related to food safety, environmental protection, animal welfare, fair trade, labour conditions, and human rights issues. Sectors experiencing the emergence of private standards are agriculture, forestry, aquaculture, apparel, and fair trade, but such standards are becoming influential in other sectors as well. The increasing influence of private standards has become an increasing concern for exporters, particularly in developing countries by imposing additional requirements on them with the result of raising barriers to market access. This paper contains a number of policy recommendations aimed at addressing these challenges. The recommendations focus on the World Trade Organization (WTO), but also aim at engaging key players in a multi-stakeholder dialogue to understand the challenges of private standards and agree on basic principles for standards-setting to contribute to overcoming the current proliferation of mutually competing standards and certification systems. In the longer term, further clarification of some WTO rules and functions is required. Consideration should also be given to improving the institutional environment of standards setting, either in the form of a standing voluntary peer group to review ongoing developments and suggest approaches to deal with challenges, or in the form of a new body specially created for this purpose.

CONTENTS

| | |
|--|-----------|
| Introduction | 1 |
| Trends Among, and Impacts of, Private Standards | 1 |
| Drivers in the Emergence and Proliferation of Private Standards | 1 |
| Impacts of Private Standards on Trade, Development, and Governance of the Multilateral Trade System | 2 |
| Trade-related Problems Caused by Private Standards | 2 |
| Private Standards and Development | 4 |
| Private Standards and Challenges for the Multilateral Trading System | 4 |
| Private Standards and Public Governance | 4 |
| Policy Recommendations to Meet the Challenges of Private Standards | 5 |
| Develop an Integrated and Holistic Approach within the WTO | 5 |
| Launch a Multi-stakeholder Dialogue | 5 |
| Establish National Focal Points | 5 |
| Encourage Formal Standards Bodies to Strengthen Their Role | 5 |
| Establish a Standing (Voluntary) Peer Group | 5 |
| Clarify and Strengthen WTO Rules | 6 |
| Clarify the Scope of Responsibility of Certain WTO Bodies | 6 |
| Establish a New Body | 6 |
| Conclusions | 6 |
| References | 7 |
| Annex 1: Definitions | 8 |
| Annex 2: Six Principles for the Development of International Standards, Guides, and Recommendations | 9 |
| Annex 3: Governance in Global Value Chains | 10 |
| Annex 4: A Discussion of the Term "Private Standard" | 11 |

LIST OF FIGURES

- Figure 1: Conditions for the Creation of Trade Barriers Through Standards
- Figure 2: Conditions of Open Standards Avoiding the Creation of Trade Barriers
- Figure 3: Typology of Governance Structures in Global Value Chains
- Figure 4: Standards Mapping—Three Principal Dimensions

LIST OF ABBREVIATIONS

| | |
|--------|---|
| FAO | Food and Agricultural Organization of the United Nations |
| FDI | foreign direct investment |
| GAP | Good Agricultural Practices |
| GVC | global value chain |
| IEC | International Electrotechnical Commission |
| ISEAL | International Social and Environmental Accreditation and Labelling Alliance |
| ISO | International Organization for Standardization |
| ITC | International Trade Centre |
| MRL | maximum residue limits |
| NEM | non-equity mode |
| OIE | World Organization for Animal Health |
| SPS | sanitary and phytosanitary |
| TBT | technical barriers to trade |
| TNC | transnational corporation |
| UNCTAD | United Nations Conference on Trade and Development |
| UNEP | United Nations Environment Programme |
| UNFSS | United Nations Forum for Sustainability Standards |
| UNIDO | United Nations Industrial Development Organization |
| VSS | voluntary sustainability standards |
| WTO | World Trade Organization |

INTRODUCTION

The past decades have witnessed the emergence and proliferation of private standards. While there has not yet been an internationally recognized definition, private standards generally refer to any requirements that are established by non-governmental entities, including wholesale or retail stores, national producer associations, civil society groups, or combinations of them.¹ They contain rules mainly related to food safety, environmental protection, animal welfare, fair trade, labour conditions, human rights protection, and others. Sectors addressed by private standards are agriculture, forestry, aquaculture, apparel, and fair trade, but other sectors are experiencing the emergence of such standards as well. While private standards may provide a stimulus to improved production practices and performance in exporting countries, and potentially provide a competitive advantage to complying producers, the proliferation and increased influence of private standards has become an increasing concern for suppliers, in particular those in developing exporting countries.

In recent years, there have been many discussions and debates on private standards with regard to trade. These discussions are mostly centred on their impacts on market access and development, their legal status in the World Trade Organization (WTO), their implications for global governance, and the means of maximizing their benefits and minimizing their risks. Unfortunately, there has not been much progress achieved so far. Despite years of efforts of a working group under the leadership of China and New Zealand, the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) has still not been able to reach consensus on a working definition of SPS-related private standards (WTO 2014). The fourth review of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which should have been completed by the end of 2014, has so far resulted in a stalemate in WTO Members' negotiations in relation to private standards.

In the Committee on Technical Barriers to Trade (TBT Committee), Members' attention was drawn to the Code of Good Practice for the Preparation, Adoption and Application of Standards (Code of Good Practice), which is open for acceptance by standardising bodies, including non-governmental bodies. However, up to now, Members have neither notified the WTO of the acceptance of the Code of Good Practice by any of these non-governmental bodies nor have they shared any experiences or information on the "reasonable measures" they have taken "to ensure that... non-governmental standardising bodies within their territories, ... accept and comply with the Code of Good Practice" (Article 4 of the TBT Agreement).

This paper starts with a discussion of the drivers in the emergence and proliferation of private standards. It then seeks to elaborate on how private standards relate to trade, development, and governance and explores how the relevant challenges can be addressed. The paper concludes that greater involvement and supervision by national governments, and increased dialogue between multilateral stakeholders, including relevant multilateral organisations, would be beneficial to the operation and the "sustainable growth" of private standards. The paper further recommends that a more proactive approach be taken by the WTO in addressing trade concerns and in harnessing the potential benefits of credible voluntary sustainability schemes, while also involving a range of other stakeholders and relevant organisations in a multi-stakeholder dialogue. Among others, it is of vital importance to encourage more open and in-depth dialogue in the WTO, on the basis of which existing WTO rules should be further clarified and possibly expanded to encompass private standards.

TRENDS AMONG, AND IMPACTS OF, PRIVATE STANDARDS

Private standards have been increasingly influential over the past decades because of several factors, such as the increasing market power of transnational corporations and major retailers, and the emergence of global value chains (GVCs) spread across various countries. These are often coordinated by lead firms that use standards as one means to govern production processes and supply chains across the globe to ensure coherence between value chain partners. Other factors driving the increase in importance of private standards are civil society groups that address environmental and social impacts through private standards, which are also referred to as voluntary sustainability standards (VSS).

DRIVERS IN THE EMERGENCE AND PROLIFERATION OF PRIVATE STANDARDS

There are at least three interrelated drivers for the emergence of private standards.

1 | A discussion of the term "private standard" is in Annex 4 of this paper.

The emergence of global value chains coordinated by large corporations either as system integrators or as key buyers (for example, retailers and supermarket chains)

UNCTAD's World Investment Report (2013: XXII) makes the following statement.

GVCs are typically coordinated by TNCs, with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers. TNC-coordinated GVCs account for some 80 percent of global trade. Patterns of value added trade in GVCs are shaped to a significant extent by the investment decisions of TNCs. Countries with a higher presence of FDI relative to the size of their economies tend to have a higher level of participation in GVCs and to generate relatively more domestic value added from trade. TNCs coordinate GVCs through complex webs of supplier relationships and various governance modes, from direct ownership of foreign affiliates to contractual relationships (in non-equity modes of international production, or NEMs), to arm's-length dealings. These governance modes and the resulting power structures in GVCs have a significant bearing on the distribution of economic gains from trade in GVCs and on their long-term development implications.

A typology of governance structures of GVCs is contained in Annex 3 (Gereffi et al. 2005). Standards can be used as a means for lead firms to coordinate the consistency of requirements regarding inputs, quality, working conditions, environmental impacts, and so on, throughout GVCs (in order to ensure "traceability", meet "chain of custody" requirements, and so on).

Societal concerns addressing the need for more ecologically sustainable and better social production conditions and environmentally friendly products

The main players in this area are consumers, mainly in developed countries, but also large companies and/or non-governmental organisations (NGOs) and/or standards consortia that are engaged in standards-setting and in some cases also in accreditation and certification schemes that support the implementation and fast market penetration of standards. Examples for such organisations are Fairtrade International, GlobalGAP, Rainforest Alliance, Better Cotton Initiative, Marine Stewardship Council, Forest Stewardship Council, UTZ Certified and many others involved mainly in fair trade, agriculture, forestry, aquaculture, and cotton, but spreading increasingly into other areas as well (oil and gas, aluminium value chain, building, tourism services, and so on). All of these organisations have a specific focus either on certain products or a certain aspect of production and trade (for example, adequate wage and human rights issues).

From this perspective, private standards are often seen as a means to fill the gaps left by regulations or other standards

and as a way of raising the bar to achieve higher levels of economic, social, and environmental sustainability.

Branding and marketing by companies to obtain additional benefits

In many cases private standards may be used to support green or bio-labelling schemes that lack a scientific and evidence basis ("greenwashing"). The multiplication of brands and labels without control through some kind of a "clearing house" to ensure they are based on scientific evidence results in confusion among consumers, increasing costs of production and affecting exports from developing countries.

IMPACTS OF PRIVATE STANDARDS ON TRADE, DEVELOPMENT AND GOVERNANCE OF THE MULTILATERAL TRADE SYSTEM

The emergence and proliferation of stringent buyer-driven, process-oriented private standards may lead to exclusive and exploitative supply chains and may result in adverse implications for trade, development, and global governance.

TRADE-RELATED PROBLEMS CAUSED BY PRIVATE STANDARDS

Private standards have been a growing concern among developing countries in the WTO. The replies from a survey carried out by the WTO/TBT Secretariat in 2009 (WTO 2009a) indicates that compliance with private standards is considered by exporters to be the prerequisite for exporting to a large number of developed country markets. Farmers and producers who cannot achieve compliance with private standards even if they meet standards developed by Codex or other formal standards-setters are losing market access opportunities and are forced to switch to alternative markets.

The survey also finds that certain retailers require very restrictive maximum residue limits (MRLs) for pesticides,

determined as a percentage of national MRLs, which are themselves at times more restrictive than MRLs set by Codex standards for the same products. Such low MRLs result in the exclusion of certain producers from the market even though they meet requirements stipulated in Codex or formal international standards. A number of replies express the view that such restrictive MRLs have neither scientific justification nor enhance food safety for consumers.

Other concerns include the high cost of compliance (for example, the average annual certification fee may vary between US\$2,000 and US\$8,000 for a private standard). This is additional to what would be incurred to comply with formal standards; repeated annual certification requirements for firms even if they have a good past record; non-transparent and inconsistent evaluations by some auditors; lack of a price premium despite the investments needed to obtain certification; multiplicity of mutually inconsistent private standards; disproportionate effect on smallholders; lack of transparency and non-involvement of exporters and other stakeholders in the private standard-setting process; and the lack of appeal procedures.

It is worth noting that the United Nations Forum on Sustainability Standards (UNFSS), a joint initiative of five UN Agencies (the Food and Agricultural Organization [FAO]; International Trade Centre [ITC]; United Nations Conference on Trade and Development [UNCTAD]; the United Nations

Environment Programme [UNEP]; and the United Nations Industrial Development Organization [UNIDO]), identified in 2013 trade-related challenges similar to those observed by the WTO Secretariat (UNFSS 2013). Additionally, the UNFSS further notes that many of the private standards are not science based and that the multiplication of private standards may put at risk their sustainability objectives and create confusion for producers and consumers.

Figure 1 exemplifies the conditions under which standards can cause specific trade-related problems that may be at the core of the concerns about private standards: a combination of a high degree of enforcement of a standard or scheme (through the support by important market players); a low degree of openness, transparency, and inclusiveness in the development process (through direct or indirect control of the development process by these market players); and a medium to high degree of market penetration of the standard (through the market power of these players).

In such cases, other market players may be cut out of a market in case they try to avoid such a standard. They also have legitimate reason to claim that the standard is imposed on them by a combination of market power and the lack of openness in its development.

A more positive set of conditions is shown in Figure 2:

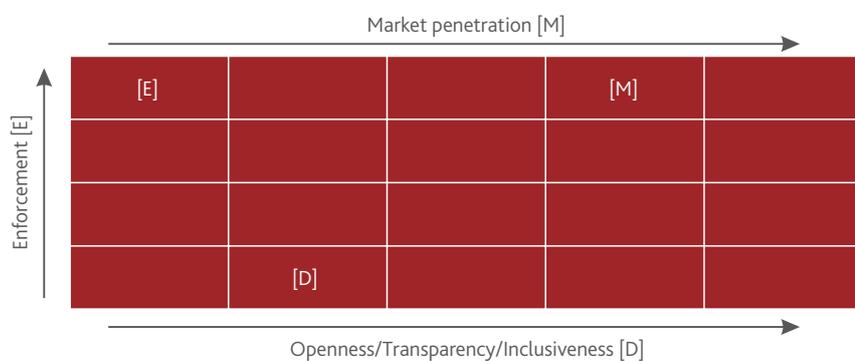


FIGURE 1:
Conditions for the Creation of Trade Barriers through Standards

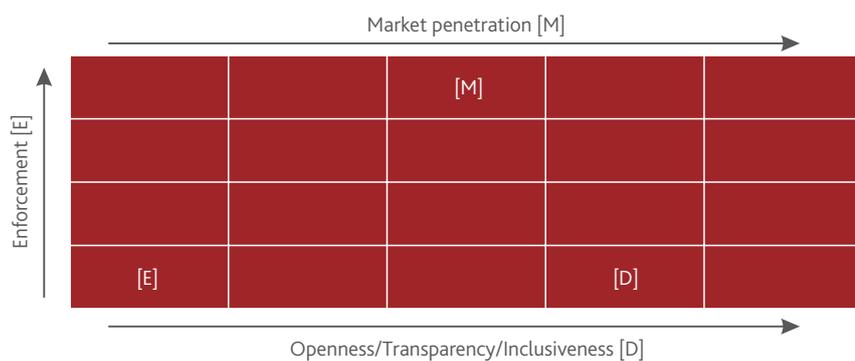


FIGURE 2:
Conditions of Open Standards Avoiding the Creation of Trade Barriers

In this case, there exists a combination of a low degree of enforcement, a low to medium degree of market penetration (which may change over time), and a much higher degree of openness, transparency, and inclusiveness of the development process, which may involve many more different stakeholders to ensure they have the possibility to influence the content of the standard during its development.

PRIVATE STANDARDS AND DEVELOPMENT

It is worrying that many private standards are developed without adequate developing-country representation. The lack of consideration of the special development, financial, and trade needs of developing countries in the preparation and application of private standards and the related certification schemes explains the often unnecessary barriers created by private standards to exports from developing countries.

PRIVATE STANDARDS AND CHALLENGES FOR THE MULTILATERAL TRADING SYSTEM

Particularly from the perspective of developing countries, the proliferation of private standards can have the potential to undermine the value, credibility, and relevance of the multilateral trading system, international standards developed in the formal standardisation system, and even regulations of governments.

There have been heated debates whether private standards are covered by WTO rules. The WTO TBT and SPS agreements generally deal with standards and conformity assessment schemes set by international standards-setting bodies and those adopted by governments.

The proliferation of private standards is bringing significant challenges to the legitimacy of the trade system, because the uncontrolled multiplication of these standards is affecting the responsibility of states towards the behaviour of the bodies that have issued them. States are members of the WTO and there is evidence that private standards are creating discrimination and barriers to trade.

There are strong arguments for the application of the WTO rules, the TBT and SPS agreements in particular, to private standards:

First, the TBT and SPS agreements impose explicit obligations on Members' governments to "take such reasonable measures as may be available to them" to ensure that "non-governmental" entities or bodies "within their territories" observe certain principles set out in the agreements, including transparency, non-discrimination, scientific

justification, use of international standards as their basis, and others (Articles 4 and 8 of the TBT Agreement, and Article 13 of the SPS Agreement).

Second, besides these obligations, Articles 4 and 8 of the TBT Agreement and Article 13 of the SPS Agreement clearly stipulate that Members "shall not take measures which have the effect of, directly or indirectly, requiring or encouraging" "non governmental" entities or bodies "to act in a manner inconsistent with" the provisions of the agreements.

Third, the TBT and SPS agreements also require Members to rely on conformity assessment procedures by non-governmental entities or bodies only if they comply with the relevant provisions (Article 13 of the SPS Agreement and Article 8 of the TBT Agreement).

PRIVATE STANDARDS AND PUBLIC GOVERNANCE

Private standards often arise to fill the gaps in standards developed through the formal standardisation system or public bodies, including government regulations and recognized international standards. However, proliferating private standards can result in competition, duplication, and even conflicts among private standards and between private standards and standards developed through the formal standardisation system. Particularly, private standards have the potential to weaken the roles of governments and international standards-setting bodies and may, under certain conditions, even render their work irrelevant. This causes inefficiency in achieving public policy objectives; it can create confusion for producers and consumers, and raises questions about the legitimacy of the market-driven private initiatives. It is, therefore, important that private standards-setters follow certain codes of good practice in standards development and application to make sure standards developed through the formal standardisation system always play a key role in protecting public goods and correcting market failures, and that more complementarity and harmonization is achieved among private standards, and between private standards and standards developed through the formal standardisation system.

POLICY RECOMMENDATIONS TO MEET THE CHALLENGES OF PRIVATE STANDARDS

In this paper, we distinguish between policy recommendations for the shorter and the longer term. However, irrespective of this distinction, it is suggested that action be taken towards the implementation of both in parallel.

SHORTER TERM RECOMMENDATIONS

DEVELOP AN INTEGRATED AND HOLISTIC APPROACH WITHIN THE WTO

The discussion of private standards and their potential negative effects should be undertaken jointly in the TBT, SPS, and Trade and Environment Committees of the WTO.

The attempt to confine the discussion to the definition of what is a private standard in the SPS Committee and postpone the issue in the TBT Committee should be reconsidered. An impartial assessment of the problem shows that some private standards address sustainability concerns, which—in addition to the SPS Committee—also fall into the scope of the TBT and the Trade and Environment Committees.

To reach a better understanding of the nature and the size of the issues at stake, private standards should be analysed in joint meetings of the SPS and TBT Committees, together with the Trade and Environment Committee, to overcome an artificial separation. An integrated and holistic approach is required to address the full complexity of private standards.

LAUNCH A MULTI-STAKEHOLDER DIALOGUE

The WTO, in collaboration with other agencies, such as the UNFSS, the ITC, the International Organization for Standardization (ISO), the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and possibly others, could consider launching a multi-stakeholder dialogue. Key organisations and stakeholders, that is standards-setting bodies from the formal as well as the private areas, main standards users, transnational

corporation (TNC) representatives, and relevant international organisations could be invited to review and discuss the issues of private standards. This would include their relationship with formal standards to develop a common understanding of the challenges and the potential for fragmenting the existing system of standardisation, and to encourage private behaviour to be consistent with the provisions of the TBT and SPS agreements.

ESTABLISH NATIONAL FOCAL POINTS

In support of transparency, the establishment of focal points for private standards in all interested countries should be considered.

As TBT and SPS rules oblige Members to establish enquiry points, private standards may also have focal points in all interested countries. These focal points could be accommodated by private or public bodies in the countries that would represent the interests of commerce, quality, agriculture, agribusiness, industry, certification, and standardisation entities. Its role could be to deal with issues related to different trade barriers caused by the proliferation of private standards.

ENCOURAGE FORMAL STANDARDS BODIES TO STRENGTHEN THEIR ROLE

Formal standards bodies, such as the ISO, the International Electrotechnical Commission (IEC) and its members, the national standards bodies from over 160 countries, and partner organisations at the regional level, should consider taking appropriate measures to serve those interests more effectively that would otherwise support the development and proliferation of private standards.

LONGER TERM RECOMMENDATIONS

ESTABLISH A STANDING (VOLUNTARY) PEER GROUP

A standing (voluntary) peer group of leading standards setters from the formal standards system as well as from private standards setters, together with regulators, main standards users, TNC representatives, and relevant international organisations could be set up to review, monitor, and recommend actions in this area. Its main objective could be the negotiation of a Code of Conduct for Standards Development and Implementation, building on existing models of such codes or principles (for example, ISO/IEC Guide 59, the TBT Code of Good Practice, the six principles for the development of international standards,

guides, and recommendations resulting from the Second Triennial review of the TBT Agreement, the Standard-Setting Code of the ISEAL Alliance) to ensure transparency, non-discrimination, accountability, and supervision through commonly applied principles.

This peer group could be based on a “secretariat” or a “membership” model. While a membership model, such as the one established by the ISO, may generate more support for the governance process among member organisations and States and could possibly lead more easily to negotiations of plurilateral or multilateral deals, a secretariat model, such as the one of the UNFSS, would have more autonomy for decisions, arriving faster at its goal.

CLARIFY AND STRENGTHEN WTO RULES

Significant work should be undertaken by the WTO. It is necessary to reflect the reality of private standards in the existing Agreements. The objective is to clarify, improve, and develop guidelines regarding the implementation of Article 13 of the SPS Agreement, and Articles 4.1, 8.1, and 8.2 of the TBT Agreement to address the challenges posed by this reality.

One goal could be to extend the application of the “Code of Good Practice” of the TBT Agreement and the TBT Committee’s “Decision on Principles for the Development of International Standards, Guides and Recommendations to the Preparation and Application of all Standards” to include private standards.

CLARIFY THE SCOPE OF RESPONSIBILITY OF CERTAIN WTO BODIES

Another important task is to clarify the scope of responsibility of existing WTO bodies, such as the TBT, SPS and Trade and Environment Committees, to cover specific trade concerns related to private standards. In the absence of such a clarification, the problems already faced by many Members in relation to private standards will probably escalate to the level of trade disputes and will be brought to the Dispute Settlement Body of the WTO.

ESTABLISH A NEW BODY

The proliferation of private standards and the need for global governance could make it beneficial to consider the establishment of a new body, sourced from key stakeholders.

A new body may be able to better deal with the overall problems associated with the proliferation of private standards and deal with their complexity. The objective is to

develop and support the implementation of basic principles, rules and instruments for the establishment, compliance, supervision, and conflict resolution of such standards.

This body will also bear responsibility for the representation of their stakeholders in international trade forums, in particular the WTO.

CONCLUSIONS

The past decades have witnessed the emergence and proliferation of so-called “private standards.” These standards are produced by non-governmental bodies in defence of different concerns related to food safety, environmental protection, animal welfare, fair trade, labour conditions, and human rights issues.

While private standards may provide a stimulus to improved production practices and performance for exporting countries, and potentially provide a competitive advantage to complying producers, the proliferation and increasing influence of private standards has become an increasing concern for exporters, particularly in developing countries.

This paper contains a number of policy recommendations aimed at addressing these challenges in the shorter and the longer term. The recommendations focus on the WTO, but also aim at engaging key players in a multi-stakeholder dialogue to understand the challenges of private standards and agree on basic principles for standards-setting to overcome the current proliferation of mutually competing standards and certification systems.

In the longer term, further clarification of some WTO rules and functions is required as well as a more stable institutional environment to address standards setting, either in the form of a standing voluntary peer group to review ongoing developments and suggest approaches to deal with challenges, or in the form of a new body specially created for this purpose.

REFERENCES

Gereffi, G., Humphrey, J. and Sturgeon, T. 2005. "The Governance of Global Value Chains." *Review of International Political Economy*, Vol. 12, Issue 1, February, pp. 78–104

ISEAL Alliance. 2014. "Setting Social and Environmental Standards." ISEAL Code of Good Practice, <http://www.isealalliance.org/our-work/defining-credibility/codes-of-good-practice/standard-setting-code>.

ISO/IEC. 1994. "Code of Good Practice for Standardization." ISO/IEC Guide 59, Geneva.

UNCTAD. 2013. *World Investment Report 2013. Global Value Chains: Investment and Trade for Development*. Geneva

UNFSS. 2013. "Objectives and Challenges of the United Nations Forum for Sustainability Standards." <https://unfss.files.wordpress.com/2013/03/intro-prest-unfss-launching-conference-21march-vers2.pdf>.

Wijkström, E. and McDaniels, D. 2013. "International Standards and the WTO TBT Agreement: Improving Governance for Regulatory Alignment." Staff Working Paper ERSD-2013-06.

WTO. 1995. Agreement on Technical Barriers to Trade. https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

WTO. 2000. Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade. Document reference: G/TBT/9.

WTO. 2007. "Private Standards and the SPS Agreement." Note by the Secretariat of the SPS Committee. Document reference: G/SPS/GEN/746.

WTO. 2009a. "Effects of SPS-related Private Standards – Compilation of Replies." Note by the Secretariat. Document reference: G/SPS/GEN/932/Rev. 1.

WTO. 2009b. Voluntary Standards, Submission by Switzerland. Document reference: G/SPS/GEN/967.

WTO. 2009c. Legal Framework for Private Standards in the WTO. Communication from Mercosur (Argentina, Brazil, Paraguay and Uruguay). Document reference: G/SPS/W/246.

WTO. 2014. SPS Committee, "Private standards", draft definition, https://www.wto.org/english/news_e/news14_e/sps_25mar14_e.htm.

ANNEX 1: DEFINITIONS

TECHNICAL REGULATION

Document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product, process, or production method.

STANDARD

Document approved by a recognized body that provides for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product, process, or production method.

Source: WTO. 1995. Agreement on Technical Barriers to Trade. Annex 1.

ANNEX 2: SIX PRINCIPLES FOR THE DEVELOPMENT OF INTERNATIONAL STANDARDS, GUIDES, AND RECOMMENDATIONS

A. TRANSPARENCY

All essential information regarding current work programmes, as well as on proposals for standards, guides, and recommendations under consideration and on the final results should be made easily accessible to at least all interested parties in the territories of at least all WTO Members. Procedures should be established so that adequate time and opportunities are provided for written comments. The information on these procedures should be effectively disseminated.

B. OPENNESS

Membership of an international standardising body should be open on a non-discriminatory basis to relevant bodies of at least all WTO Members. This would include openness without discrimination for participation at the policy development level and at every stage of standards development.

C. IMPARTIALITY AND CONSENSUS

All relevant bodies of WTO Members should be provided with meaningful opportunities to contribute to the elaboration of an international standard so that the standards development process will not give privilege to, or favour the interests of, a particular supplier/s, country/ies or region/s. Consensus procedures should be established that seek to take into account the views of all parties concerned and to reconcile any conflicting arguments.

D. EFFECTIVENESS AND RELEVANCE

In order to serve the interests of the WTO membership in facilitating international trade and preventing unnecessary trade barriers, international standards need to be relevant and to effectively respond to regulatory and market needs, as well as scientific and technological developments in various countries. They should not distort the global market, have adverse effects on fair competition, or stifle innovation and technological development. In addition, they should not give preference to the characteristics or requirements of specific countries or regions when different needs or interests exist in other countries or regions. Whenever possible, international standards should be performance based rather than based on design or descriptive characteristics.

E. COHERENCE

In order to avoid the development of conflicting international standards, it is important that international standardising bodies avoid duplication of, or overlap with, the work of other international standardising bodies. In this respect, cooperation and coordination with other relevant international bodies is essential.

F. DEVELOPMENT DIMENSION

Constraints on developing countries, in particular, to effectively participate in standards development, should be taken into consideration in the standards development process. Tangible ways of facilitating developing countries' participation in international standards development should be sought. The impartiality and openness of any international standardisation process requires that developing countries are not excluded de facto from the process. It may be appropriate to use technical assistance, in line with Article 11 of the TBT Agreement, to improve participation by developing countries. Provisions for capacity building and technical assistance within international standardising bodies are important in this context.

Source: TBT Agreement. 2000. Second Triennial Review, Annex 4.

ANNEX 3: GOVERNANCE IN GLOBAL VALUE CHAINS

Figure 3 provides a typology of the organisation of GVCs and their governance structures ranging from market-based exchanges between independent firms ("market") to full integration of certain operations into lead firms ("hierarchy"). The basis of this typology is the specific combination of three factors:

A. The complexity of the information and of the knowledge transfer required to communicate product and process specifications from lead firms to suppliers;

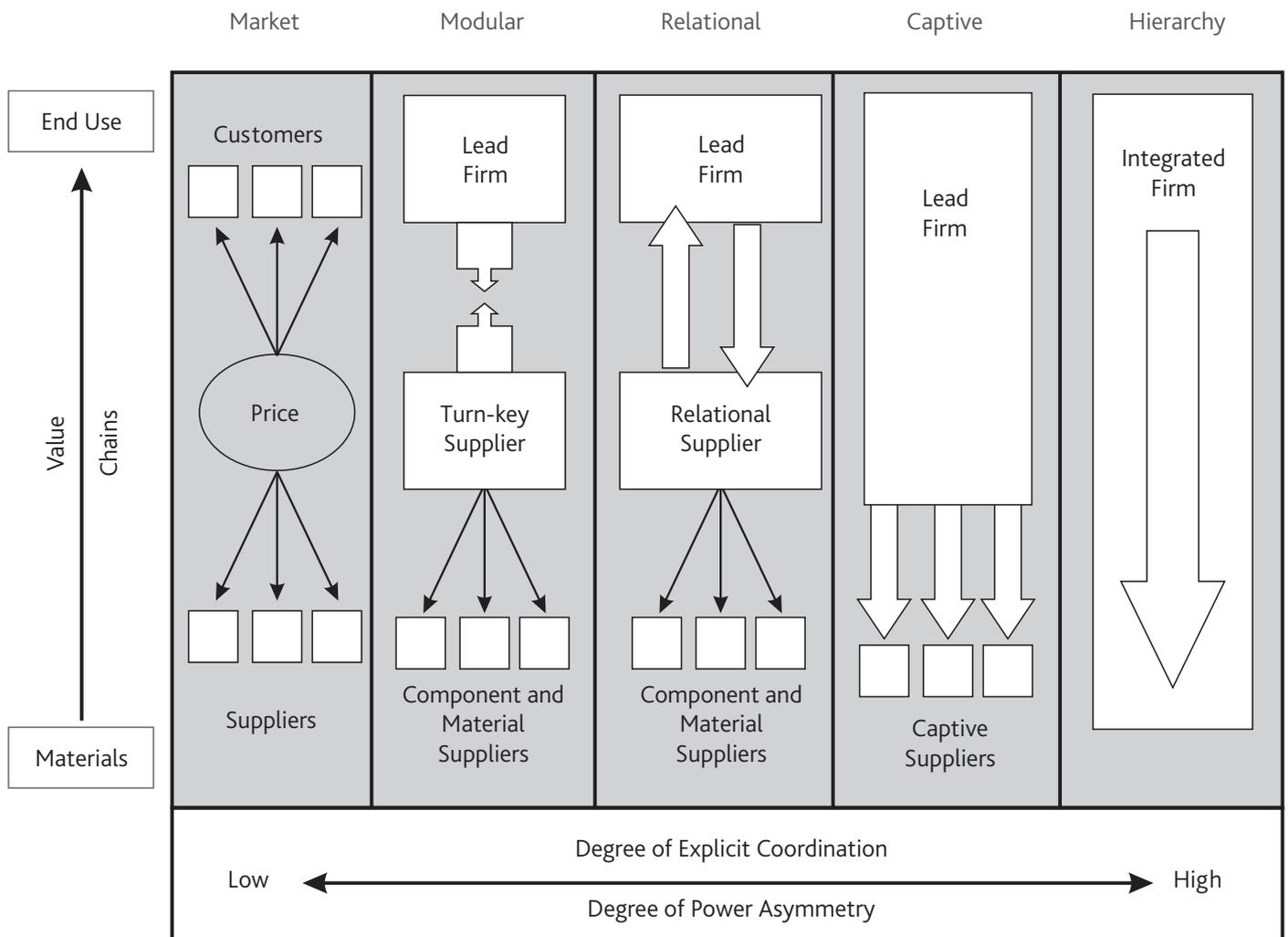
B. The extent to which such information can be codified and thereby made self-sufficient so that additional transactions between the cooperating firms are not needed;

C. The capabilities of actual and potential suppliers to handle product and process specifications of lead firms and thereby to meet the requirements posed by them.

FIGURE 3:

Typology of Governance Structures in Global Value Chains

Source: Gereffi, G., Humphrey, J. and Sturgeon, T. (2005: 89).



ANNEX 4: A DISCUSSION OF THE TERM 'PRIVATE STANDARD'

The term “private standard” was introduced in June 2005 in the SPS Committee through a case raised by St. Vincent and the Grenadines expressing concerns about trade impacts caused by EurepGAP certification for bananas and is in use in the WTO since then.

As mentioned in the Introduction of this paper, the term “private standards generally refers to any requirements that are established by non-governmental entities including wholesale or retail stores, national producer associations, or civil society groups, or combinations of them.”

However, it is argued here that the term “private standard” itself is inappropriate and misleading for the following reasons.

1. Many standards are developed by bodies that have the legal status of private entities. Most standards organisations in Western European countries and the US are private, although some of them are recognized—through different agreements and in different forms—by the governments in their respective countries as “national standards bodies”.
2. In many other countries, standards organisations are governmental entities. In spite of this, the vast majority of the standards developed by them are voluntary regarding their use. An example is China whose national standards body, the Standardization Administration of China (SAC), is a governmental entity. However, more than 90 percent of the national standards published by SAC have the status of “voluntary” standards.

3. In line with the WTO/TBT definition of “standard” (see Annex 1), standards are voluntary, but they can be
 - a) made mandatory through reference in legislation, or
 - b) introduced as one option (among possible others) to meet the requirements stipulated by legislation, in which case they are not legally binding but have a prominent status as a means to satisfy legal requirements.

Both the options exist, irrespective of whether a standard was developed by a governmental or a non-governmental entity. In both cases their status changes from a voluntary document, that is, a standard, to a “regulation” or a kind of “quasi-regulation” (in case b).

As a consequence, a standard, irrespective of whether it was developed by a governmental or a non-governmental entity, can be voluntary or become mandatory. This means the term “private” does not introduce a relevant distinction between standards.

It is, therefore, more appropriate to refer to “standards” in general and distinguish between different types of standards on the basis of a set of three principal dimensions:²

Degree of enforcement of the standard: Has the standard been made mandatory through legislation? Is it imposed by a lead firm in a supply or value chain making compliance by a firm a pre-condition for its participation in the chain?

Degree of market penetration: What is the spread of the standard in a market(s)? Has it reached a market-dominating position?

Degree of openness/transparency/inclusiveness of the development process and, as a consequence, the level of consensus it represents: Was the development process

² Other criteria may also be applied, for example, the degree to which a standard is based on scientific or related evidence (for example, from laboratory tests), see Wijkström and McDaniels (2013).

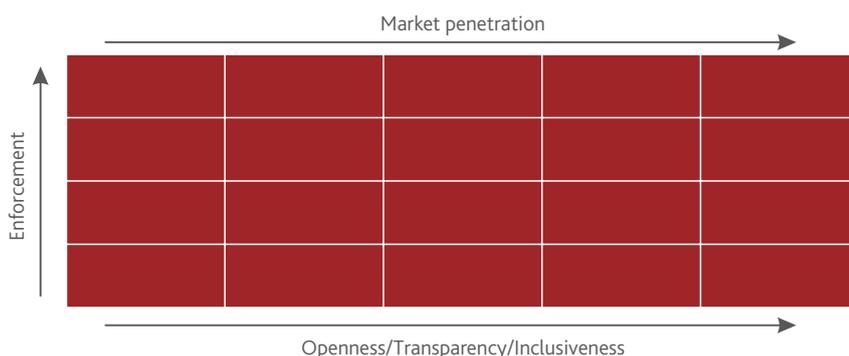


FIGURE 4:
Standards Mapping – Three Principal Dimensions

open, transparent, and inclusive of all relevant stakeholders? What degree of consensus does it consequently represent? To what extent did it meet the six principles formulated by the TBT Committee in the second triennial review (Annex 2)?

Different standards can be mapped to these three dimensions and can be distinguished on this basis. It should be noted that maximum openness, transparency, and inclusiveness may not be required in all instances. For example, standards regarding the design of a technical device may be developed by a consortium of manufacturers without negatively affecting the interests of other manufacturers or end users of the device.

However, whenever standards have or are likely to have a significant impact on markets and in particular on end users and consumers, the degree of openness, transparency, inclusiveness, and, consequently, the level of consensus that standards represent, is essential. Appropriate procedures and rules applied by standards-setting bodies should, therefore, ensure that such requirements are met.

Implemented jointly by ICTSD and the World Economic Forum, the E15 Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business, and civil society geared towards strengthening the global trade and investment system for sustainable development.



International Centre for Trade
and Sustainable Development



COMMITTED TO
IMPROVING THE STATE
OF THE WORLD