



# Private Standards, Trade, and Sustainable Development: Policy Options for Collective Action

Fabrizio Meliado



International Centre for Trade  
and Sustainable Development

Issue Paper



# Private Standards, Trade, and Sustainable Development:

---

## Policy Options for Collective Action

**Fabrizio Meliado**

Independent Trade Policy Consultant



International Centre for Trade  
and Sustainable Development

Issue Paper

**Published by**

International Centre for Trade and Sustainable Development (ICTSD)  
 International Environment House 2  
 7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492  
 ictsd@ictsd.ch

Fax: +41 22 917 8093  
 www.ictsd.org

Publisher and Chief Executive:  
 Managing Director:  
 Programme Officers:

Ricardo Meléndez-Ortiz  
 Deborah Vorhies  
 Nicholas Frank and Kiranne Guddoy

**Acknowledgements**

This paper was produced under ICTSD's Programme on Inclusive Economic Transformation as part of a project focused on global value chains which is aimed at empowering least developed and low income countries to effectively utilise value chains to achieve sustainable and inclusive economic transformation.

The author would like to thank the participants of the ICTSD Expert Group Meeting on "Realising Inclusive Economic Growth through Value Chains: The Role of Private Sustainability Standards", Divonne, France, 14 June 2017, where the first draft of this paper was presented and extensively discussed. Gratitude for comments and project support goes also to Deborah Vorhies, Christopher Bellmann, and Kiranne Guddoy of ICTSD, as well as to Professor Ingeborg Schwenzer (University of Basel) for sharing her views on the first draft. The paper takes into account the comments expressed at the Expert Group Meeting, as well as the views of anonymous experts, but does not necessarily reflect any of those comments or views.

ICTSD gratefully acknowledges funding from the German Federal Ministry for Economic Cooperation and Development (BMZ) for this project. ICTSD is also grateful for the generous support from its core donors including the UK Department for International Development (DFID); the Swedish International Development Cooperation Agency (SIDA); the Ministry of Foreign Affairs of Denmark (Danida); the Netherlands Directorate-General of Development Cooperation (DGIS); and the Ministry of Foreign Affairs of Norway.

ICTSD welcomes feedback on this publication. This can be sent to Kiranne Guddoy (kguddoy@ictsd.ch) or Fabrice Lehmann, ICTSD Executive Editor (flehmann@ictsd.ch).

**Citation:** Meliado, Fabrizio. 2017. *Private Standards, Trade, And Sustainable Development: Policy Options for Collective Action*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).

**Copyright** © ICTSD, 2017. Readers are encouraged to quote and reproduce this material for educational and non-profit purposes, provided the source is acknowledged. This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit: <https://creativecommons.org/licenses/by-nc-nd/4.0/>

The views expressed in this publication are those of the author and do not necessarily reflect the views of ICTSD or the funding institutions.

ISSN 1995-6940

## TABLE OF CONTENTS

LIST OF TABLES, FIGURES, AND BOXES	iv
LIST OF ABBREVIATIONS	v
FOREWORD	vii
EXECUTIVE SUMMARY	viii
1. INTRODUCTION	1
2. WHY ARE PRIVATE STANDARDS IMPORTANT FOR BUYERS AND SELLERS ALONG GLOBAL VALUE CHAINS?	3
2.1 What Are “Private” Standards?	3
2.2 Differences between Standards, Regulations, and Private Standards	7
2.3 What Is the Role of Private Standards in GVCs?	10
2.4 Disentangling the Unjustifiable Trade-Inhibiting Effects of Private Standards from Other Supply-Side Constraints	13
3. WHY SHOULD STATE ACTORS INTERVENE?	16
3.1 Introductory Remarks	16
3.2 Why Would “Orchestration” Be a Suitable Approach Towards Collective Action?	19
3.3 Is There a Mandate in the 2015 UN Sustainable Development Goals?	21
4. LESSONS FROM MULTILATERAL AND BILATERAL EXPERIENCES	23
4.1 State of WTO Discussions and Key Documents	23
4.2 WTO Disciplines and Technical Assistance Mechanisms of Relevance to Private Standards	25
4.3 What Has Blocked the Discussions at the WTO Thus Far?	28
4.4 Notes from Bilateral or Small-Club Trade Agreements	29
4.5 Lessons Learned	30
5. POLICY OPTIONS	32
5.1 Options That Can Be Implemented Without a Globally Agreed Set of Meta-Guidelines	32
5.2 Options That Entail Global Agreement on a Set of Meta-Guidelines	36
5.3 Comparative Analysis of Proposed Options	37
6. RECOMMENDATIONS FOR FUTURE WORK	39
REFERENCES	41

## LIST OF TABLES, FIGURES, AND BOXES

Table 1: Core characteristics of international standards, regulations, and private standards

Table 2: Comparing success factors for standards

Table 3: SWOT analysis of policy options proposed

Figure 1: Examples of conformity assessment methods

Figure 2: Approaches to collective action

Box 1: What makes a standard “successful”?

Box 2: WTO TBT Committee principles for the development of international standards (excerpts)

Box 3: Examples of discussions on what is an “international standard”

Box 4: Making sense of traceability, audits, and labelling

Box 5: Standard setters and sustainable development

Box 6: The G20 and international concerted action on private standards

Box 7: Excerpts from the 12 “actions” included in the work programme of the SPS Committee in 2008

Box 8: Objectives of the UNFSS

## LIST OF ABBREVIATIONS

AB	Appellate Body
B2B	business to business
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CMA	Chemical Manufacturing Association
Codex	United Nations Codex Alimentarius Commission
CRA	common regulatory arrangement
CSO	civil society organisation
CSR	corporate social responsibility
DSU	Dispute Settlement Understanding
EIF	Enhanced Integrated Framework
EU	European Union
EUI	European University Institute
EUKOR	EU-South Korea Free Trade Agreement
e-WG	electronic working group
FSC	Forest Stewardship Council
FTA	free trade agreement
GFSI	The Global Food Safety Initiative
GPA	Agreement on Government Procurement
GSSI	The Global Sustainable Seafood Initiative
GVC	global value chain
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
IGO	international governmental organisation
ILO	International Labour Organization
IOC	International Olive Council
IPPC	International Plant Protection Convention
ISEAL Alliance	International Social and Environmental Accreditation and Labelling Alliance
ISO	International Organization for Standardization
ITC	International Trade Centre
KBOB	Swiss Coordination Group for Public Sector Construction and Property Services
LDC	least-developed country
MNC	multinational company
MRL	maximum residue level
MSC	Marine Stewardship Council

NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OIE	World Organization for Animal Health, previously Office International des Epizooties
PEFC	Programme for the Endorsement of Forest Certification
PPP	public-private partnership
RSPO	Roundtable on Sustainable Palm Oil
SDG	sustainable development goal
SME	small and medium-sized enterprise
SPLC	US Sustainable Purchasing Leadership Council
SPS	sanitary and phytosanitary
SSCG	Sustainable Supply Chain Governance
SSCM	Sustainable Supply Chain Management
STDF	Standards and Trade Development Facility
SWOT	strengths, weaknesses, opportunities, and threats
TA	technical assistance
TBT	technical barrier to trade
TFA	Trade Facilitation Agreement
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UN/CEFACT	United Nations Centre for Trade Facilitation and E-business
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNGC	United Nations Global Compact
UNFSS	United Nations Forum on Sustainability Standards
VSS	voluntary sustainability standard
WTO	World Trade Organization
WWF	World Wildlife Fund



## FOREWORD

Customers and lead firms, among others, around the world are increasingly setting requirements intended to ensure more sustainable production and consumption patterns. Private standards are thus progressively more prevalent across production processes, whether at the intermediate or final goods level.

By definition, these private standards, often viewed as tools to address social and environmental concerns in value chains, do not impose mandatory requirements for accessing a country's market. Yet private standards do impose mandatory requirements for accessing the consumers or clients of a given distributor, or a specific product market. Given that consumers and clients are the “locomotives” of often long and globalised trains of buyer-seller transactions, private standards are of primary concern for all actors operating in global value chains.

In view of the proliferation of private sustainability standards and attendant issues over their design and implementation, questions have emerged about the need to foster greater international cooperation around such standards, including by exploring potential updates to current governance frameworks. Should private standards be addressed at the multilateral level? If so, should the World Trade Organization (WTO) play a role in disciplining how its members regulate the use of private standards? Would it be better to address matters of regulatory cooperation on private standards outside of the WTO?

With this study, Fabrizio Meliado, independent trade policy consultant, aims at providing policymakers with a menu of policy options—both within and beyond the WTO—to cooperate effectively towards a harmonised meta-regulatory approach on private standards. The analysis refers in particular to private sustainability standards but can be applied to any type of private standard. The research paper is part of a three-part series on social and environmental regulations and standards developed by ICTSD with the support of the German Federal Ministry for Economic Cooperation and Development (BMZ).

The objective of the ICTSD research series under which the present paper has been produced is to provide input into the policy debate on how developing and least developed countries can utilise value chains to achieve sustainable and inclusive economic transformation. We hope that this paper on regulations and standards, and indeed the series, will prove to be a useful contribution.



Ricardo Meléndez-Ortiz

## EXECUTIVE SUMMARY

The objective of this paper is to present a menu of policy options to support collective governmental actions on the “issue of private standards.” The paper focuses on private standards with direct and indirect sustainable development objectives or impacts (including e.g. on human rights, economic, environmental, or social sustainability, food and product safety and quality, etc.). Its research methodology is based on an analysis of factual and conceptual studies, as informed by discussions with experts.

**What is the issue of private standards?** The private standards addressed in this paper are those that are set and/or implemented by businesses, civil society organisations (CSOs), or a combination thereof. The first key finding of the paper is the recognition that there are both confusion and misconceptions as to the nature of the market-access (or rather, buyer-access) problems ascribed to the setting and operation of private standards. The paper thus identifies a gap in the literature, and calls for more research on the specific downsides of private standards, disentangled from other general factors hindering access to markets, buyers, and key distribution channels. The paper then proceeds to review the role and potential drivers of private sustainability standards in the sequences of buyer-seller transactions known as global value chains (GVCs), highlighting that private sustainability standards:

- 1) Have made significant contributions to the advancement of sustainable development priorities;
- 2) May be driven by consumer preferences, businesses’ market penetration strategies, CSOs lobbying, or a combination thereof;
- 3) Have effects in terms of reputation and trust-creation along GVCs;
- 4) Are management tools to shift risks, costs, and responsibilities along GVCs; but
- 5) Are also suitable to be used for the unfair exclusion of smaller or would-be GVC players, while potentially leading to anti-competitive outcomes.

Among the elements that can lead to such unfair exclusion, the paper identifies and analyses four issue areas: 1) transparency, 2) economic sustainability, 3) credibility, and 4) potential anti-competitive outcomes.

**Why should governments intervene?** The paper finds that international concerted action on private standards would be fully justified and desirable. The potential failures of private standards are already being tackled by a number of voluntary meta-governance initiatives operating at the global level. While these initiatives bring real value and improvements to the governance and operation of private standards, they also present structural limitations. Against this backdrop, and in the context of a theoretical discussion of transnational new governance dynamics, the paper submits that businesses and CSOs, if left alone by state actors in handling sustainability issues, cannot see the bigger picture in relation to the welfare losses potentially caused by the operation of private standard schemes, while also running the risk of being captured by sectoral interests. As a consequence, the paper identifies international governmental organisations (IGOs) as the main global actors that have the means (global convening power) and the legitimacy (accountability of Member governments) collectively to address the “issue of private standards.”

**What lessons can be drawn from multilateral and bilateral experiences?** As a third element, the paper reviews key developments in the 2005-2016 World Trade Organization (WTO) discussions on private standards, highlighting the value these talks have created in terms of open global dialogue,

issue scoping, knowledge sharing, and awareness raising, while also acknowledging the inability of WTO Members to agree on a way forward on the “issue of private standards.” The paper finds that three core factors help to explain this inability to agree:

- 1) The lack of clarity as to the specific nature of the problem being discussed;
- 2) The fear of agreeing on language that might later be used in WTO disputes; and
- 3) The excessive emphasis placed on the downsides of private standards.

The lessons drawn from the WTO experience are:

- 1) The discussion ought to be focused more pragmatically on trade impacts, i.e. avoiding the risk of getting stuck in semantics;
- 2) The positive aspects of private standards too need to inform the discussion more prominently; and
- 3) More factual information is needed on the unnecessary or unjustifiable buyer-access hurdles that can be attributed exclusively to private standards.

The paper then moves on to an analysis of the case of bilateral or small-club free trade agreements (FTAs). Using a narrow filter for language specifically addressing private standards governance, the paper reports limited evidence of FTA norms directly addressing private governance issues. Using a broader filter for language that more generally relates to standards and standardisation issues, the paper reports both success stories, particularly in terms of mutual recognition arrangements, and stories of persistent difficulties, particularly in connection with the harmonisation of standardisation policies across national legal frameworks.

**What could be done?** The paper argues that the following options are available to improve the governance and operation of private standards, through actions taking place both inside the WTO (options 1-3) and outside of it (options 4-5), as follows:

1. Creating a joint sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) transparency mechanism for private standards;
2. Establishing a public-private cross-pollination mechanism under the Agreement on Government Procurement (GPA);
3. Launching a work programme on sustainability-related public-private partnerships (PPPs) within the framework of the Trade Facilitation Agreement (TFA); and
4. Expanding the work programme of the United Nations Forum on Sustainability Standards (UNFSS), so as to officially include international, regional, and national standards bodies;
5. Using the United Nations Global Compact (UNGC) to promote transparency and accountability principles.

In addition, the paper argues that using a model for international regulatory cooperation, open to the whole United Nations (UN) Membership, would be another option, but would entail ancillary agreement on a global set of meta-governance principles.

The potential strengths, weaknesses, opportunities, and challenges of the proposed options are set out in the following table.

## SWOT analysis of policy options proposed

Policy Option	Strengths	Weaknesses	Opportunities	Threats
<i>Options that can be implemented without a globally-agreed set of meta-guidelines</i>				
<b>SPS-TBT transparency mechanism for private standards</b>	<ul style="list-style-type: none"> <li>- Low transaction costs.</li> <li>- Existing stock of knowledge and experience.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing convergence between SPS-TBT notification systems.</li> </ul>	<ul style="list-style-type: none"> <li>- Political blockage.</li> </ul>
<b>GPA work programme on cross-pollination</b>	<ul style="list-style-type: none"> <li>- Already an element of the GPA work programme.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially significant transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing trends at the national level.</li> </ul>	<ul style="list-style-type: none"> <li>- If implemented in isolation would improve but not solve the main issues at the full WTO membership level.</li> </ul>
<b>Sustainability-related PPPs in the TFA framework</b>	<ul style="list-style-type: none"> <li>- Level of interest in technical assistance and financial activities connected with implementing the TFA.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially medium-level transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing trends at the country level.</li> <li>- Mainstreaming an official sustainability dimension in the TFA.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>
<b>Expanding the UNFSS family</b>	<ul style="list-style-type: none"> <li>- High level of engagement and coordination of various UN agencies.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>	<ul style="list-style-type: none"> <li>- Building on the body of knowledge and the network of the UNFSS.</li> <li>- Increasing openness and dialogue.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>
<b>Adding "Principle 11" to the UNGC</b>	<ul style="list-style-type: none"> <li>- High level of private sector engagement.</li> </ul>	<ul style="list-style-type: none"> <li>- Implementation on a voluntary basis subject to structural limitations.</li> </ul>	<ul style="list-style-type: none"> <li>- Building on the success of the UNGC.</li> </ul>	<ul style="list-style-type: none"> <li>- If implemented in isolation, issues of monitoring and enforcement might remain unsolved.</li> <li>- Might overlap with other meta-governance schemes.</li> </ul>
<i>Options that entail global agreement on a set of meta-guidelines</i>				
<b>Using a model for international regulatory cooperation</b>	<ul style="list-style-type: none"> <li>- Flexible and ready-to-use framework to both agree on meta-principles and administer their implementation at the UN-wide level.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially high transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Using an existing institutional framework at the UN-wide level.</li> <li>- Creating a flexible mechanism to bring together the existing meta-governance tools through the "reference to standards" clause.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>

## 1. INTRODUCTION

*“Global enterprise and communication networks will continue to produce rules and procedures for transnational activities, many of which, like the lex mercatoria, will have only a limited link to national and international law. We can expect a greater mix and overlap of public and private international law with the line between them rather blurred.”*

*Prof. Oscar O. Schachter (1997)*

The so-called private standards, those that are set and/or operated by private companies, consortia and/or civil society organisations (CSOs), have become a constitutive element of international commercial transactions, as well as a powerful and effective tool to mainstream environmental, social, and economic sustainability considerations in purely economic operations. They may cover physical characteristics and/or processes and production methods for a wide range of goods, and also address the services sector.

Private standards, by definition, do not impose mandatory requirements for accessing a country's market. Only the government can impose mandatory market access requirements on its national territory, generally by way of laws and regulations. Yet private standards impose mandatory requirements for accessing the consumers or clients of a given distributor, or a specific product market. Given that consumers and clients are the “engines” of often long and globalised trains of buyer-seller transactions, known as global value chains (GVCs), the requirements imposed by private standards are of primary concern for GVC players.

Standards and standardisation policies naturally vary across the cultures, societies, and entities that demand, set up, and implement them. This is an intrinsic feature of the world of standardisation, as well as an obvious reflection of the legitimate differences that exist across countries and communities. In this context, private standards are widely recognised as a

valid branding and product differentiation tool, a source of new economic opportunities, a means to accessing GVCs, and a strategic tool for the trust-based management of international buyer-seller transactions. So what is the nature of the problems associated with private standards that have been voiced, at least since 2005, at the level of the multilateral trading system?

A first set of problems relates to unjustifiable or unnecessary restrictions on accessing key distribution channels; these reportedly affect in particular smaller or would-be GVC players, who highlight the potential of private standards to unjustly exclude allegedly compliant products from marketing opportunities. This adds to warnings about fragmentation, overlaps, multiplicity, credibility, and varying degrees of transparency in terms of how standards are set, how conformity with their requirements is assessed and audited, and the extent to which traceability systems are reliable.

A second set of problems relates to setting boundaries for the design and operation of private standards. Should states intervene in setting such boundaries? Should “the sustainability certification business” be left to self-regulation? This is, arguably, a matter of primary concern and immediate responsibility for policymakers.

In discussions thus far held mostly at the World Trade Organization (WTO), solving the second set of problems—on the issue of potential disciplines—has been seen as a means of also achieving benefits and improvements in relation to the first one (on trade and development impacts). In the period from 2005 to 2016, WTO Members have conducted valuable work in terms of issue scoping, awareness raising, and information sharing; however, their divide on legalistic issues has remained irreconcilable.

As a consequence, many questions remain unanswered: should the issue of private standards be addressed at the global

governmental level? If so, could the WTO play a role in the discussion? Would there be room to proactively address the issue also in other fora?

This paper aims to provide policymakers with a menu of policy options to effectively cooperate towards improving the global governance of private standards. The analysis refers in particular to “private sustainability standards,” but can be applied to any types of private standards whose implementation leads to sustainable development impacts. The paper proceeds as follows:

SECTION 2 reviews key facts, terminology, and core characteristics of standards in general, and of private standards in particular. It discusses literature on the drivers of private sustainability standards, as well as on their role in GVCs. Finally, with a view to providing the necessary background for the subsequent governance-related analysis, Section 2 attempts to identify the buyer-access problems for smaller or would-be GVC players that could be attributed specifically to the setting and operation of private standards.

SECTION 3 analyses elements that justify concerted international action on private standards. It reviews global governance approaches, as well as the merits and limitations of existing voluntary instruments aimed at setting boundaries for the establishment and operation of private standard schemes, for instance on transparency, credibility, and accountability grounds. From a policymaker’s perspective, this analysis is particularly relevant to helping answer the question as to whether or not concerted international action

on private standards is desirable or even necessary.

SECTION 4 opens with a brief review of the evolution of 12 years of WTO discussions on private standards, focussing on key documents from those discussions. Thereafter, it illustrates the existing WTO disciplines and technical assistance mechanisms that have been, or could be, associated with the debate on private standards. It then moves to the context of preferential trade agreements at the bilateral or small-club level, and discusses relevant norms applicable to private standards governance. It concludes by drawing lessons from both multilateral and bilateral, or small-club, experiences.

SECTION 5 explores options for concerted international action on private standards. First, it discusses potential avenues to undertake adjustments and improvements to global private standards governance, irrespective of the existence of global disciplines on private standards. These options are fully complementary, and present the potential to improve the governance of private standards by building on existing trends and synergies both inside and outside the WTO. Second, the discussion moves to options that would entail the need for a globally agreed set of guidelines. Importantly, the proposed options are not expressed in any hierarchical order, nor are they meant to be exhaustive. Section 5 concludes with a comparative matrix of the proposed options.

The paper closes by suggesting ideas and recommendations for future work and further research on private standards.



## 2. WHY ARE PRIVATE STANDARDS IMPORTANT FOR BUYERS AND SELLERS ALONG GLOBAL VALUE CHAINS?

Private standards have become an established feature of GVCs, and a powerful and effective tool for mainstreaming sustainability criteria in economic transactions. It is a fact that they have proliferated tremendously over the past twenty years, and their influence on market structures and behaviours along the value chain has also increased.

This Section reviews key facts, terminology, and core characteristics of standards in general, and of private standards in particular. It discusses literature on the drivers of private sustainability standards, as well as on their role in GVCs. Finally, it attempts to identify the buyer-access problems for smaller or would-be GVC players that could be attributed specifically to the operation of private standards. This provides key background for the policy options towards concerted international action discussed in subsequent sections.

### 2.1 What Are “Private” Standards?

#### 2.1.1 General features of standards

To understand what are “private” standards for the purposes of the present analysis, it is necessary to preliminary clarify what standards are in more general terms. According to the International Organization for Standardization (ISO), standards are: “... *documents established by consensus* ... that provide, *for common and repeated use*, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the *optimum degree* of order in a given context....” (ISO/IEC1996, ISO/IEC 2001; emphasis added).

As the features of standards emphasised are common to the vast majority of standards, they deserve a closer look:

- **“Established by consensus”:** in general terms, standards are developed by subject matter experts in response to a request by industry representatives and/or other stakeholders. Experts’ disagreement on the technical requirements of an aircraft component, for instance, could have important implications for the safety of future users, as well as of third parties. This is why a wide consensus basis is generally sought for, both during standard development work and when the time is ripe to adopt or amend standards. While the consensus rule may be thought to represent a guarantee that standards reflect state-of-the-art science and technology, one should note that: first, consensus does not mean unanimity, and second, that majority voting is often foreseen, sometimes as a second-best option for approval/amendment, sometimes by default.
- **“For common and repeated use”:** for instance, there are many ways to build a bridge. Yet knowledge advancement and technological progress have arguably led to widely accepted rules and guidelines on how best to build a bridge in a specific geological, socio-economic and environmental context. If it is true that standards capture knowledge advancement and technological progress, then they also allow for the common and repeated use of the resulting best practice by fixing it in one single, user-friendly source: a document.
- **“Optimum degree”:** assuming that standards are developed by accredited, world-class subject matter experts by consensus, and that they reflect state-of-the-art science and technology, then it is plausible to presume that standards lead to an optimum degree of order when producers and service providers abide by their guidelines. For the same reason, standards are liable to being revised and updated over time, and so they are in real life. Box 1 illustrates additional characteristics of standards in general that may contribute to their being “successful.”

### Box 1: What makes a standard “successful”?

- **Ensuring interoperability:** “Interoperability, or compatibility, allows products from different manufacturers to share components and operate together in networks. Compatibility adds value by increasing the size of the market for [standardised] complementary products and services.” (Grindley et al. 2017)
- **Establishing a critical mass of users:** standards of any types are successful only when users implement them effectively. As a consequence, attention should be given to strategies to create a critical mass of users already before launching a new standard, with initiatives such as inclusive vertical integration in GVCs, openness, and proofs of benefits arising from use, accountability, credibility, and transparency. The importance of this element is highlighted by the fact that, in several instances, standards have been established *de facto* by the market choices of users and beneficiaries.
- **Sponsoring co-producers and initial users:** in connection with the previous point, an important means for getting “subscribers” is sponsoring suppliers who aim at implementing the standards through business to business (B2B) technical and financial assistance.

Source: Based on selected findings from Grindley et al. (2017).

Another common element of standards is that they are often “international”. What does this mean? The WTO Agreement on Technical Barriers to Trade (TBT Agreement), for example, relies heavily on the concept of international standards, obliging WTO

Members to base their governmental measures on “relevant international standards” where they exist, or are about to be approved. Box 2 gives excerpts from a set of principles for the development of international standards agreed by WTO Members in 2000.

### Box 2: WTO TBT Committee principles for the development of international standards (excerpts)

1. **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 (...).
2. **Openness:** Membership of an international standardizing body should be open on a non-discriminatory basis to relevant bodies of at least all WTO Members (...).
3. **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 standard development process will not give privilege to, or favour the interests of, a particular supplier/s, country/ies or region/s (...).
4. **Effectiveness and relevance:** (...) 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 (...).
5. **Coherence:** In order to avoid the development of conflicting international standards, it is important that international standardizing bodies avoid duplication of, or overlap with, the work of other international standardizing bodies. In this respect, cooperation and coordination with other relevant international bodies is essential.



## Box 2: Continued

**6. Development dimension:** (...) The impartiality and openness of any international standardization process requires that developing countries are not excluded de facto from the process. With respect to improving participation by developing countries, it may be appropriate to use technical assistance, in line with Article 11 of the TBT Agreement (...).

Source: Excerpts from WTO (2000), para. 20 and Annex 4.

What is it, then, that makes *international* standards so appealing? It is, essentially, a matter of averting arbitrariness in the selection of the standard to be implemented, while also aiming at standards that are, as much as possible, representative of transnational know-how, technological progress, values, and cultural or religious constraints.

In this connection, it should be noted that possibly every country has a national standardisation body. There are also regional standards organisations. Finally, there are entities and organisations, such as the International Organization for Standardization (ISO), ASTM International, or

the United Nations (UN) Codex Alimentarius Commission (Codex), which operate at a global level, involving experts and other stakeholders (e.g. consumer associations, regulators, CSOs, etc.) from potentially all countries and regions. These entities are generally considered as developers of *international* standards.

Hence in simple terms, the attribute “international” refers to who develops a standard, as well as to how such standard is developed (i.e. by consensus). As simple as it could seem here, this is a highly controversial topic in policy circles, as proved e.g. by the TBT Committee discussions summarised in Box 3.

## Box 3: Examples of discussions on what is an “international standard”

**Olive oil.** In two related trade concerns on olive oil standards, the United States and European Union challenged one another’s measures for apparent deviations from international standards for grading. At dispute was the applicability of International Olive Council (IOC) olive oil grading standards (specifically for fatty acid composition) to an olive oil standard being set by the Codex Alimentarius Commission (CODEX). The United States argued that the European Union measure was following the IOC standards, which it did not consider to be an internationally recognised standard-setting body, since IOC standards reflected the interests of European and Mediterranean countries (“IOC grading standard reflected input exclusively from its members in European and Mediterranean countries”). Conversely, the European Union accused the United States measure of diverging from CODEX standards.

**Lead in pottery.** The European Union objected to a Mexican draft standard for glazed pottery, ceramics and porcelain, which mandated more stringent lead and cadmium limits than those laid down in the relevant international ISO standards (ISO 6486-1/2). Specifically, the European Union was concerned that Mexican authorities would no longer accept test results accompanying EU ceramic tableware conducted in compliance with these ISO standards. Mexico explained that while its draft standard was partially based on ISO standards, it deviated in certain aspects due to a greater level of health protection required by Mexico, and due to the circumstances of Mexico as a developing country.

Source: Excerpts from Wijkstrom and McDaniels (2013). Original footnotes omitted.

### 2.1.2 How are standards implemented in practice?

If the most basic image of a standard is one of a document containing guidelines, how are the latter put into practical operation? Standards, in fact, do not exist in the abstract. They are the normative component of complex conformity assessment and certification schemes.

For products in general, the assessment of conformity with the requirements of a standard can be carried out in three main ways: first, conformity assessment can be carried out by the seller or producer itself, usually through a written statement containing a “supplier’s declaration of conformity.” This statement means that the producer assesses its own

products or processes and takes responsibility for their conformity to the standards. In some legal frameworks, this declaration is necessary for the placement of products on the market. Second, the buyer can carry out conformity assessment. This methodology appears to be widely used by multinational companies (MNCs) and large retailers conducting inspections in their suppliers’ premises. This methodology allows trust-creation and the transfer of knowledge and expertise, due to the direct communication established across various units of the production and distribution chain. Third, an independent body or testing service entrusted or recognised by the parties to a given transaction can be in charge of assessing conformity; this is the case of “third-party certification” (UNECE 2009; see Figure 1).

**Figure 1: Examples of conformity assessment methods**

Method	Process	Effect
1 Seller	Conformity assessment carried out by seller or producer including the statement “supplier declaration of conformity” (SDoC)	Grants market access in jurisdictions that accept validity of SDoC mechanism
2 Buyer	Inspection by buyers of supplier premises (widely used by multinational corporations)	Trust-creation, knowledge transfer and increased communication between buyer / supplier
3 Third Party	Independent and accredited “third party” assesses conformity to standard for certification	Credibility of independent verification for interested stakeholders
4 Regulatory Bodies	Independent verification required by regulatory bodies	Meet legal and regulatory requirements

Source: Elaborated on the basis of UNECE (2009).

A relevant, but delicate, step in this process is the accreditation of conformity assessment bodies. The key principle is that accreditation bodies, which are in many cases entities entrusted by the government to carry out their functions, be independent from the conformity assessment body being accredited. Obviously, the reason for this is to avoid conflicts of interest and anti-competitive behaviours (see section 2.4.4 below).

In addition to conformity assessment methods, standards may entail traceability schemes, periodical audits, and product labelling. These elements are important to understand the composition of the costs of compliance generally associated with standards, as well as the extent of the technical capabilities required of the economic operators who aim at compliance. More information about these additional elements involved are given in Box 4.

#### Box 4: Making sense of traceability, audits, and labelling

**Traceability:** Traceability is “the ability to trace the history, application or location of that which is under consideration” (ISO 9001:2000). In commercial terms, a traceability scheme entails various layers of responsibilities (towards regulatory authorities, but also towards users) placed on various GVC players, to demonstrate for instance that a product that makes a certain claim of compliance (e.g. environmentally sustainable production methods) is not mixed with identical non-compliant products (see e.g. GS1 2007). A traceability scheme thus implies additional costs and know-how, but can be crucial for credibility purposes.

**Audits:** Auditing is closely intertwined with certification processes. It is the process whereby an entity runs checks before or after certification of compliance with a standard. Some standard schemes provide for mandatory audits at regular intervals, possibly carried out by consultants and third parties (see e.g. ISO & IAF 2016). This obviously adds further costs to maintaining a certification of conformity with a standard, but again can be important for long-term credibility purposes.

**Labelling:** Labels may appear on final products or in the premises, documents, or websites of service providers (e.g. hotels certified for abiding by responsible tourism principles). Labels are important because they support product differentiation and marketing from a business perspective, as well as the ability of making informed purchasing decisions on the consumer or customer side.

#### 2.2 Differences between Standards, Regulations, and Private Standards

In spite of the general characteristics of standards sketched out in the previous subsection, there appears to be both terminological and conceptual confusion with regard to the differences between private, public, voluntary, mandatory, and regulatory standards. The present paper abides by the core definition set forth in the TBT Agreement, whereby standards are always voluntary: compliance with their guidelines is not a mandatory condition for accessing a country's market. Regulations, on the other hand, are always mandatory: a country adopts a law requiring domestically produced as well as imported toys not to contain a certain chemical, for instance. As a consequence, no toys containing that given chemical will legally access that country's market.

Still at the national or custom-union level, there is also a third option: (mandatory) regulations that refer to, are based on, or

even reproduce verbatim the guidelines of a given standard (often, an “international” standard). This happens frequently, and is even encouraged as a principle of international regulatory cooperation, since it is seen as a means of approximating the legal frameworks of two or more sovereign entities with a view, for instance, to facilitate the international exchange of goods and services.

At the international governmental level, on the other hand, it is possible to find standards that are developed directly by international governmental organisations (IGOs). Some of these standards take the form of legally binding treaties, such as multilateral environmental agreements or core labour rights conventions of the International Labour Organization (ILO). Whether or not they become mandatory, then, depends on how they are implemented.

Acknowledging this confusion, Table 1 sets out the three types of instruments to which this paper makes reference, including examples of each.

Table 1: Core characteristics of international standards, regulations, and private standards

	International Standards	Regulations	Private standards
<b>Governance and implementation</b>	Set by private-public partnerships, including CSOs, academia, regulators, and industry representatives. Compliance with relevant requirements is in principle voluntary, but can become mandatory, e.g. when standards are incorporated in regulations.	Set, adopted, and applied by the government directly or indirectly. May be based on standards, particularly “international”, but also “private” standards. Compliance with relevant requirements is mandatory.	Set and operated by private companies, CSOs, or joint initiatives thereof. Compliance with requirements is voluntary, but it can become <i>de facto</i> mandatory when the standard setter, e.g. a large distributor, has a particularly dominant position in a given product or geographic market.
<b>Examples</b>	ISO/ International Electrotechnical Commission (IEC) standards; ASTM International standards.	European Union “Seal Ban” (Regulation EC No. 1007/2009).	The Marine Stewardship Council (MSC) standard for sustainable seafood, which started in 1996 as a joint initiative of Unilever and the World Wildlife Fund (WWF), and later evolved to include other public interest and commercial stakeholders in its Stakeholder Council.

Table 1 shows the complexity and interconnectedness of the governance structure of international standards, regulations, and private standards. This complexity is widely acknowledged in the literature (see e.g. Marx 2017). There may be, for instance:

- Private standard schemes that arguably meet the requirements to be considered “international” standards;
- International standards that may *de facto* be developed by limited groups of stakeholders in spite of their being open to universal multi-stakeholder participation;
- Governmental measures importing guidelines and mechanisms developed in the context of private standard schemes.

#### 2.2.1 Virtually all standards have sustainable development impacts

This paper adopts a broad definition of “sustainability standards”, thus focussing:

- On private standards that set out economic, environmental, or social/human rights sustainability specifications for products, as well as guidelines for the sustainable management of various types of organisations (see Table 2);
- But also on standards in the domain of food safety or human, animal, or plant life/health promotion or protection.

The reason for this broad focus lies in logical and analytical necessity. If it is true that compliance with successful standards in general

fosters innovation and efficiency, promotes food and products' quality or safety, protects human, animal, or plant life or health, etc., it can be argued that all successful standards are sustainability standards. This is the case because, either directly or indirectly, *successful* standards can be presumed to contribute to the advancement of economic, environmental, or social sustainability objectives (including e.g. poverty eradication and human rights-related objectives).

*A contrario*, it can also be argued that a standard that claims to be a tool for advancing sustainable development objectives, but in connection with its implementation actually undermines one or another of those sustainable development objectives, would still be a standard with an impact on sustainable development, albeit a negative one.

In this context, there appears to be some evidence of a debate to extend the common understanding of “sustainability standards”. For instance, the United Nations Forum on Sustainability Standards (UNFSS) has proposed the following working definition for “voluntary sustainability standards” (VSS):

VSS are standards specifying requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, relating to a wide range of sustainability metrics, including respect for basic human rights, worker health and safety,

the environmental impacts of production, community relations, land use planning and others. (UNFSS 2013)

However, the 2016 UNFSS Flagship Report highlighted the role of “international standards” in “complementing governmental engagement towards achieving sustainable development”, and clarified that:

While ISO is not considered as a VSS-developer due to its wide scope of initiatives that cover many areas not directly related to sustainability, ISO standards contribute to the establishment of an infrastructure for sustainable consumption and production, and promote sustainability management for any type of organization in support of the 2030 Agenda for Sustainable Development. (UNFSS 2016, fn. 1)

Yet another set of examples of sustainability standard schemes, intended as schemes that openly claim to pursue one or multiple sustainable development objectives, is provided by the “Standards Map”, an initiative of the International Trade Centre (ITC).

The examples of standards that pursue sustainable development-related objectives are virtually countless when one looks at the activities of standard-setting organisations at large. Box 5 gives relevant excerpts from the websites of a sample of standard setting bodies or networks thereof.

#### Box 5: Standard setters and sustainable development

**IEC:** “...the work of the IEC directly impacts 12 of the 17 Sustainable Development Goals. The IEC provides the technical foundation for the whole energy chain and all equipment that is driven by electricity.”

**ISO:** “Developing sustainably”; “ISO Standards to promote sustainable growth,” including the ISO 14000 and 26000 series..

**ASTM International:** “Sustainability Standards”; “ASTM standards on sustainability and sustainable development address environmental and economic concerns in buildings and construction.”

Box 5: *Continued*

**United Nations Centre for Trade Facilitation and E-business (UN/CEFACT):** “UN/CEFACT recommendations and standards ... have knock-on effects on a broad range of SDGs [sustainable development goals], even the most overarching goals such as poverty eradication (SDG 1) and the reduction of inequality within and between countries (SDG 10).”

*Source: Agencies' own websites.*

### 2.2.2 Proliferation and multiplicity

More than 200 sustainability standard schemes are listed in the ITC Standards Map database, mostly classifiable as private standards, company codes, and auditing protocols within the meaning of Table 2. The UNFSS, on its side, counts more than 400 schemes (UNFSS 2016).

Some observers refer to this plethora of schemes using terms such as proliferation and multiplicity. Such terms seem to have gained a predominantly negative connotation in policy discussions; as the following sub-sections make clear, having a variety of schemes that compete with each other—provided they do so on credibility and marketability grounds—is not in and of itself a failure of private standards. Yet proliferation and multiplicity can become a failure of private standards where they lead to overlaps, contradictions, race-to-the-bottom situations, multiple audits, unjustifiable discrimination, or unjust exclusion (see e.g. Abbott and Snidal 2009).

What explains the proliferation of private schemes? Private sustainability standards have reportedly emerged in the marketplace as a response to increased consumer demand for food and product safety, growing exponentially in the period from 1991 to 2015, in particular in the sectors of food, textiles, and consumer goods and services. Statistics show that the role of VSS continues to grow in importance, particularly in emerging markets and other developing countries, with 36 percent of VSS initiatives established in non-OECD (Organisation for Economic Co-operation and Development) countries in the period from 2010 to 2015, thus growing significantly from a base of 8 percent of such initiatives in these countries before 1990 (ITC and EUI 2016).

It is interesting to highlight that final consumer and CSOs' demand has driven the development of ethical or sustainability standards in sectors where there was greater downstream visibility of potential misbehaviours by MNCs, or in sectors with potential negative health and safety impacts directly attached to final products or their parts and components, such as food and textiles. Other sectors of production, such as “household electronic equipment, large complex products like cars and various services, like the internet and telecoms”, have reportedly more often escaped the ethical concerns of consumers and CSOs (see Vermeulen 2013).

As a consequence, the considerations made thus far suggest that an analysis of the drivers of private sustainability standards is better conducted on a case-by-case basis. Private standards, in fact, appear to result from the combination of highly diverse factors, including consumer demand, CSOs' lobbying and awareness-raising activities, as well as the product differentiation or market penetration strategies of GVC players.

### 2.3 What Is the Role of Private Standards in GVCs?

As introduced earlier, GVCs can be imagined as “trains” of buyer-seller transactions, although they are not necessarily linear. Intermediate and final goods, as well as services and service providers cross national borders and operate in a complex environment of regulatory and private requirements for products, services, processes, and preferential origin certifications, to name but a few. Changes in consumer preferences and marketing strategies constitute additional core variables that shape a GVC, which may also cut across the same border more than



once, and ultimately results from connecting the dots across this complex set of variables and transactions.

Against this backdrop, standards in general, including private standards, can make the life of GVC players easier or harder: easier, since through their implementation traders, MNCs, and regulatory bodies speak a common language; harder, because compliance with standards may present technical and financial challenges, particularly for smaller or would-be GVC players.

This dual nature of standards in general is widely recognised in the literature, and probably represents today's conventional wisdom. The present analysis, however, concentrates on the specific case of private standards and the discussion as to whether or not concerted international action is needed to facilitate their positive sustainable development impacts. Therefore, the following sub-sections will briefly review literature on the role of private standards in GVCs, including their drivers, practical functions, implications for fair competition, and potential benefits or failures.

### 2.3.1 Reputation

Favoured by the ICT revolution of the past two decades, reputational considerations relating to private standards are usually decided at the MNC top-management level. They may arise in response to environmental degradation or scandals around social conditions becoming public, and CSOs reacting to these scandals by promoting boycotts and other commercially relevant bottom-up actions.

Examples of standards arising from reputational needs include, for instance, the Roundtable on Sustainable Palm Oil standard (RSPO, see e.g. Brandi 2017), or the standard schemes developed in relation to mining activities in developing countries, a sector in which “over 80 different private production standards are in place, supplemented by voluntary principles and guidelines” (Bellmann 2016).

### 2.3.2 Trust building

Private standards are frequently process standards: they regulate the impact of production on social, environmental, or other variables, and so help build value into certified goods and services through an increase in consumers' trust. Their requirements are often formulated by independent, third-party organisations, be they international CSOs, IGOs, or specialised private bodies. Trust building may be a function of the traceability, auditing, and certification schemes applicable to a given standard. Certain schemes include traceability systems and surveillance audits carried out at regular intervals.

### 2.3.3 GVC management

The practical role of private standards in GVC management also helps to explain the rise of standards in general, and of private sustainability standards in particular.

Vermeulen and Seuring (2009), for example, explain that private standards relating to sustainability issues are primarily a tool for attributing, sharing, and/or transferring risks, costs, and responsibilities along GVCs, as follows:

...new schools of research and knowledge have emerged in the field of sustainable supply chain management (SSCM) and sustainable supply chain governance (SSCG), first in support of businesses taking up their active role in their supply chains: communicating about their ‘joint environmental (and later socio-ethical) impacts’ throughout the supply chain and developing strategies to improve them. This could either be taken up in a collaborative mode or by applying their market power. In either case, it usually includes green product (re)development as well as selecting suppliers that can meet the newly added sustainability requirements, often specified in environmental and social standards. Key topics also include striving for an extended sustainability performance, where

trade-offs among the three dimensions of sustainability only result if efficiency frontiers are reached. In the last decade this development has been gaining speed. After an initial experimentation phase with individual frontrunner companies and sustainable entrepreneurs developing niche markets for Fair Trade and other sustainable (organic) products, in practice we have been entering a new phase of mainstream market activity in this field. This is also reflected in new research directions, focussing on the collaboration of multiple actors in addressing sustainability in full supply chains: the governance of (often world wide) supply chains. (Vermeulen and Seuring 2009)

#### 2.3.4 Private standards and e-commerce

A note deserves to be made on the emerging role of private standards in international sales carried out through e-commerce, when many GVC intermediaries are out of the picture. E-commerce and online sales are reportedly on the rise, and scholars suggest that the discussion on the uptake of sustainability standards needs to keep pace with such trends. What early empirical research highlights is, in fact, that online buyers are generally more informed and more attentive to product specifications relating to sustainability issues. This, in turn, would make compliance with sustainability requirements at the farm or factory level an even more crucial element for “preserv[ing] a competitive edge” (see e.g. Gazzola et al. 2017).

#### 2.3.5 Enabler for accessing GVCs but...

An ever-increasing body of literature is available to document the effects of compliance with private standards as an enabler for GVC participation, where and when the right conditions are in place. The Food and Agriculture Organization of the United Nations (FAO 2014), for instance, carried out a large literature review expressly addressing the impact of “international voluntary standards” (akin to the “private sustainability standards” addressed by the present analysis) on

smallholder market participation in developing countries, reporting that:

1. “There is some evidence of economies of scale in certified markets and a tendency for self-selection in these systems as farmers and exporters with the means to make the initial investments are the first to join. Some studies have shown that the ability of exporters and farmers to meet the requirements of voluntary standards depends largely on greater assets, knowledge of certification requirements, and pre-existing relationships with certified value chains. Self-selection is strongly related to the evidence of exclusion found in standards that focus primarily on advanced food safety issues.
2. There is evidence that the choices made by retailers, manufacturers, and importers regarding types of quality, safety, and sustainability standards, as well as the producers they are willing to work with, are fundamental to the ability of voluntary standards to impact smallholder market participation positively. In other words, there is evidence that buyer preferences, pre-existing buyer-supplier relations, and producer organisational structures are selection mechanisms for the adoption of standards by small-scale producers.
3. The institutional contexts within which smallholders operate are important. Recent research has begun to pay attention to such contexts in order to understand how standards interact with pre-existing norms of production and trade. A necessary but insufficient condition for increasing smallholder participation in markets is the existence of national institutions to support compliance by farmers with standards that reflect a market demand.
4. In most sectors and countries, compliance with standards and certification does increase costs, but also increases farm gate prices. Some evidence of increased profitability was found for fair trade and organic certification, but the evidence is not conclusive.”



### 2.3.6 ...Suitable for exclusive backward integration

At the same time, another GVC-related aspect of private standard operation that is often highlighted in the literature relates to their suitability for exclusive backward integration. This means that through the implementation of private standards, and in the absence of corrective measures such as effective and fair contract farming schemes, or incentives for group certification, large exporters and other downstream players are incentivised to source from larger suppliers, thus excluding potential external suppliers.

Firms would engage in this type of vertical integration for efficiency and cost-cutting reasons, and there are quantitative case-specific analyses supporting such a supposition. Schuster and Maertens (2013), for instance, have analysed a dataset of 567 asparagus export firms in Peru over the period from 1993 to 2011, finding that private certification schemes “lead to vertical integration and significantly reduce the share of product that is sourced from external producers, with a larger effect for small-scale producers.” For their study, the standard schemes analysed were subdivided according to the extent of the investments and technical know-how they required to achieve compliance on the part of producers or processors.

From a qualitative perspective, on the other hand, Brandi (2017) has reviewed the RSPO saga against a general sustainable development trade-offs analysis. She recalls that in the case of palm oil RSPO certification in Malaysia, as well, firms tend to source from larger producers who can document RSPO compliance at a lower cost, hence tending to exclude smallholders from certification and export opportunities.

## 2.4 Disentangling the Unjustifiable Trade-Inhibiting Effects of Private Standards from Other Supply-Side Constraints

As reviewed, the proliferation of sustainability standards worldwide has created both new opportunities and (additional) constraints on the

ability of developing country producers and GVC players to integrate into international supply chains. For developing countries’ products and services, in fact, conforming to standards can help secure market opportunities and achieve sustainable development objectives, but both certification and maintenance of compliance conditions can be costly and technically challenging, particularly for small producers and small and medium-sized enterprises (SMEs).

These technical and financial hurdles to comply with standards, however, look very similar to those that are normally faced by smaller or would-be GVC players in relation to market integration in general. What, then, are the factors hindering market participation that can be specifically ascribed to the existence and operation of private standards? A need for dedicated research emerges from the attempt to answer this question: while the information is contained within the literature, very few studies among those analysed seem to directly and explicitly isolate the effects of private standards from other structural factors.

From the information analysed in preparing this study, however, the specific failures of private standards appear to be linked to multifaceted issues. They relate to matters of transparency, economic sustainability, credibility, and anti-competitive outcomes and can be explained by the flaws of a specific scheme, or emerge from the combined operation of multiple parallel schemes.

### 2.4.1 Transparency

Lack of transparency appears as a key failure in the operation of several private standard schemes. While improvements have been observed in the field of company corporate social responsibility (CSR) codes and company sustainability reporting, difficulties linger in terms of access to information relating to compliance requirements and conformity assessment techniques for private standards, as well as to participatory approaches in standard development processes (see e.g. IIS 2017, 31-33; SPS Committee 2009). In addition, even the availability of key documents in various

languages appears as a transparency issue in relation to some schemes (ITC and EUI 2016).

Transparency can also be seen through the prism of participatory governance. The International Institute for Sustainable Development (2016), for example, has observed that in the seafood sector only three out of nine schemes complied with an engagement index indicator named "external stakeholder decision making in standard-setting process." This indicator is essentially a benchmark for transparent and participatory governance, identified as a key determinant of the success and long-term sustainability of a standard scheme.

#### 2.4.2 Economic sustainability

The economic sustainability of a private standard scheme, particularly from the perspective of a small business that considers whether or not to invest in certification, depends on complex cost-benefit considerations, as well as on the ability of that certification scheme to ensure a minimum degree of interoperability.

The ITC and European University Institute (EUI) undertook a quantitative observation of the subdivision of certification costs per group of economic operators across a population of 181 VSS (2016). They found that in 54.6 percent of these VSS schemes, producers alone bear the total certification costs, whereas for implementation costs this rate increases to 64.4 percent of the observed schemes. Certification costs are shared between producers and GVC players in 26.1 percent of cases, and between producers, GVC players, and the standard-setting system in only 1.7 percent of the observed population.

In addition, again over this population of 181 VSS, schemes provide varying types and levels of support (ITC and EUI 2016):

- supporting documentation: 166;
- technical assistance on the requirements for compliance: 105;
- technical assistance beyond compliance requirements: 50;
- financial assistance to suppliers: only 25.

In terms of interoperability, the situation appears to be equally, if not more, problematic. Scheme requirements are reportedly often misaligned both with each other, and in relation to regulatory requirements in one or multiple jurisdictions. Private standards in the sanitary and phytosanitary (SPS) domain appear as key examples of these trends. For example, a survey conducted in 2010 of the members of the World Organization for Animal Health (OIE) revealed some evidence of conflicting SPS private standards. It also found evidence of private standards being more prescriptive than the equivalent public regulation requirements, since these tended to be based on outcomes in the field of animal health, public health, and animal welfare— meaning that implementers would enjoy greater freedom as to the means of reaching the desired outcomes (as reported by Robach 2010; see also SPS Committee 2009).

#### 2.4.3 Credibility

The credibility of private standards appears to be a function of two distinct variables: 1) the scientific justification of their requirements, particularly with regard to SPS- and environment-related standards; and 2) the conformity assessment/auditing techniques used to certify and maintain compliance.

1. **Scientific justification:** the scientific base of a standard is an important element to justify its necessity and credibility. Yet if the scientific justification even of governmental measures is often problematic and questionable, one can imagine how problematic it can become in the context of private governance initiatives. As a matter of fact, the scientific justification of private standards, particularly in the SPS sector, is frequently questioned (see e.g. SPS Committee 2009). Beyond the SPS sector, additional examples

along the same lines are reported in environmental protection for instance by King and Lenox (2000), with regard to the Responsible Care Program implemented by the Chemical Manufacturing Association (CMA): 3,606 CMA member facilities were found not to have improved their environmental performance compared with non-members in the period from 1987 to 1996; by individual scientists in general, and in various fora, with regard e.g. to sustainability standards related to the fishery, forestry, and fair trade sectors (see e.g. comments posted to [www.OnSubject.eu](http://www.OnSubject.eu), 3 May 2011); and by Brandi (2017), who highlighted reports questioning the ability of RSPO and similar schemes to achieve their stated environmental protection and restoration objectives.

2. **Conformity assessment techniques:** the credibility of a standard scheme can also be assessed against the verification, auditing, and certification techniques it foresees. Professor Masahiro Kawai, for example, explains that: “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 criticized for abusing its market power to exert anti-competitive practices, such as unfair pricing, inadequate inspections, and corruption. In addition, big certifiers often refuse to share their testing protocols, thereby impeding a move to greater harmonization, mutual recognition or equivalence of standards.” (IIS 2017, 27-28)

#### 2.4.4. Potential anti-competitive outcomes

The exclusive vertical integration dynamics discussed in sub-section 2.3.6 may be reproduced at various levels moving downstream along a GVC; to the extent that they can be proven to unlawfully limit competition (under the competition laws of the given national jurisdiction), they can be considered anti-competitive practices.

Professor Kazumochi Kometani (IIS 2017, 12-18), for instance, provides an analysis of: 1) the case of private standards shared between two enterprises and adopted for non-economic objectives (e.g. product safety), and 2) the case of private standards containing non-product-related environmental or social requirements, when adopted by individual enterprises. Professor Kometani suggests that, under national competition laws, in case 1) the agreement to share the same standard could be scrutinized against the legitimacy of the objectives pursued, a means-end test, and a non-discrimination in application test; while in case 2), the analysis could be particularly strict, and look at how a standard is designed against the objective situation of the market in which it operates.

#### 2.4.5 Factors of success in standards and private standards

Table 2 summarises some of the factors that play a role in making standards in general “successful,” as discussed in Sections 2.1 and 2.2, and compares them with factors that can make private standards more successful, as discussed in Section 2.3.

**Table 2: Comparing success factors for standards**

Factors that can make standards in general “successful”	Factors that can make private standards more “successful”
Interoperability	Improved transparency and credibility
Critical mass of users	↑ Interoperability + ↑ B2B technical and financial assistance = ↑ Economic sustainability
Support to “subscribers”	Safeguards against anti-competitive outcomes

In the light of the analysis presented in Section 2, should governments play an active role in correcting the potential downsides of private standards, so as to allow private standards to

become ever more successful in the achievement of their sustainable development objectives? Section 3 addresses this question.

### 3. WHY SHOULD STATE ACTORS INTERVENE?

As seen in Section 2, international standards, regulations, and private standards may in principle have the same trade effects. But they can be either very similar or very different in terms of governance structures and principles guiding their design and operation. Distributors and service providers who increasingly implement private sustainability standards have legitimate justifications for doing so, including reputational, managerial, and ethical considerations. Yet it also appears that private standards implementation can lead to sub-optimal outcomes due to matters of transparency, economic sustainability, credibility, and potential anti-competitive outcomes.

Who should intervene to correct such potential failures? Building on conceptual literature and factual considerations, this section analyses elements that justify international concerted action on private standards. It reviews global governance approaches, as well as the merits and limitations of existing voluntary instruments aimed at setting boundaries for the establishment and operation of private standard schemes, for instance on transparency, credibility, and accountability grounds.

From a policymaker's perspective, this analysis is particularly relevant to helping answer the question as to whether or not international concerted action on private standards is desirable or even necessary. This analysis can also inform a more critical reading of the relevant work done thus far at multilateral and bilateral levels, presented in Section 4, as well as of the policy options discussed in Section 5.

#### 3.1 Introductory Remarks

The emergence of “transnational new governance” has been identified in the literature as a transformative reality of our time; private standards, as well as company codes and corporate actions aimed at implementing sustainable development

principles, fall within the definition of this new form of governance (see e.g. Murphy 2005).

As instruments of private transnational governance, private sustainability standards implemented by businesses and/or CSOs are similar to mandatory technical specifications or sanitary requirements for products, intermediate goods, or ingredients, because they address regulatory subject areas that have traditionally been the province of governmental regulation and CSO lobbying: the advancement of sustainable development objectives, the protection of citizen health and safety, the protection of public morals, the promotion of human rights, etc.

The theory on the distribution of competencies between governments, CSOs, and MNCs in relation to sustainable development concerns (such as human rights or social and environmental protection) suggests that governments are better positioned than MNCs or even CSOs to achieve policy outcomes that would increase the welfare of the society as a whole, even in the context of standardisation activities (see e.g. Vermeulen et al. 2010). This insight is based on the assumption that MNCs and CSOs alone cannot see the bigger picture, and also risk to be captured by sectoral interests that would lead to sub-optimal welfare gains, or even losses, at the global, regional, or national level.

Yet this theoretical view is being challenged by the reality of today's GVCs in relation to private governance of sustainability issues, with MNCs and CSOs increasingly filling a regulatory vacuum left by the inability of governmental initiatives to regulate such sustainability issues at the transnational, or even municipal, level (Abbott and Snidal 2009; Vermeulen 2013).

The degree of engagement of MNCs and CSOs with regard to filling this regulatory vacuum has in fact reportedly grown over the past 20 years. A vast body of literature documents this

trend, focusing on both benefits (including e.g. objective improvements in workers' conditions) and limitations of self-regulation through private sustainability standards, CSR codes, and similar private governance initiatives (for instance, the “fox that guards the hens” argument).

The need to address such limitations and correct the potential downsides of private standards explains why IGOs appear to be the main international actors with both the means (global convening power) and the legitimacy (member governments accountable for their actions) to act collectively and impartially to avert potential failures of private sustainability governance.

### 3.1.1 Are there instruments to address the potential downsides of private sustainability governance?

The objective need to address the potential downsides of private standards is supported, in the first place, by the existence of voluntary international instruments aimed at setting guidelines for how to develop and operate standards.

These instruments are generally referred to as meta-codes, meta-principles, or meta-guidelines, because they take the form of framework rules addressing how standards should be set and operated, how to ensure they are credible, transparent, etc. Given that standards are governance instruments in and of themselves, the instruments aimed at regulating the behaviour of standard setters and the operation of standard schemes are often called meta-governance instruments (i.e. governance of governance = *meta-governance*).

The following gives some examples of such voluntary instruments. They include codes of meta-guidelines that may or may not specifically address private standards. The list is indicative, and the instruments it refers to vary significantly in terms of scope and governance structures, thus they should be understood as merely illustrative:

- **TBT Committee principles for international standards:** six core principles set up under the auspices of the WTO TBT Committee, aimed at clarifying the basic requirements for a standard to be considered an “international” one (see Box 2).
- **TBT Code of Good Practice for the Preparation, Adoption and Application of Standards** (TBT Code), Annex 3 to the WTO TBT Agreement: mirrors the main provisions of the TBT Agreement on transparency, necessity, and non-discrimination, but is applicable on a voluntary basis.
- **ISO codes:** ISO has developed various meta-standards, principles, and policies regarding transparency and accountability, including: ISO Code of Ethics (2004); ISO/IEC Directives, Part 1, ISO Supplement (2016): *Procedures for the technical work*; ISO policy on communication about technical work to external parties (2015); ISO/IEC/ITU common patent policy (2007).
- **ASTM International code:** ASTM International has its own “Regulations Governing ASTM Technical Committees” (2017), whose purpose is “to provide a set of rules that will ensure the development of consensus standards in accordance with rigorous democratic procedures.”
- **ISEAL:** The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance is a consortium of multi-stakeholder standards and accreditation bodies. Members join ISEAL by proving respect for the ISEAL Codes of Good Practice and credibility principles. These include codes for harmonised conformity assessment, standard setting, and sustainability impact assessment methodologies.
- **GFSI:** The Global Food Safety Initiative (GFSI) is an industry-driven initiative of the Consumer Goods Forum, a large global partnership of manufacturers,



retailers, and service providers from both developed and developing countries. The GFSI proposes benchmarking requirements against which to test the credibility and effectiveness of food safety standards.

- **GSSI:** The Global Sustainable Seafood Initiative (GSSI) is a global partnership-based initiative bringing together representatives of the seafood industry, governments, IGOs, CSOs, and academia. It proposes a benchmarking tool for sustainability standard schemes operating in the seafood sector.
- **WWF minimum content requirements for effective and credible standards and certification schemes:** A document setting out 16 principles against which the WWF assesses the credibility and effectiveness of a standard or certification scheme, thus leading to WWF “recognition” or “active endorsement” of the given scheme (WWF 2012).

### 3.1.2 Why would the existing instruments not be sufficient?

While these and other similar initiatives should be praised for several tangible results in terms of promoting transparency, accountability, economic sustainability, and credibility in the world of standardisation in general, and of private standardisation in particular, their effectiveness has also been questioned in the literature, with commentators (see e.g. Fransen 2015) highlighting:

- **Potential conflicts of interest:** this refers to the “fox that guards the hens” argument mentioned in the previous sub-section, noting that some of the voluntary meta-governance initiatives mentioned (and others) are governed by the same actors that then will have to abide by the rules they themselves set up.
- **Tendency to proliferate and overlap in the same way as the instruments they try to discipline:** the list proposed contains only some examples of voluntary meta-codes operating at the global level, but could be extended. The argument here is that, in the absence of an overarching coordination mechanism, these meta-codes may lead to further confusion and contradictions.

### 3.1.3 Do the existing instruments address matters of transparency, economic sustainability, credibility, and safeguards against anti-competitive outcomes?

#### *Transparency*

Transparency is probably the least controversial principle to be taken up in a set of meta-principles, and virtually all the existing instruments contain guidelines related to it. However—recalling for instance CSR-related discussions and relevant analyses of the difficulty of making CSR reporting mandatory and harmonizing it—transparency reforms are not to be taken for granted.

Transparency principles in relation to private standards are similar in nature, ranging from the mere availability of documentation in multiple languages to complex participatory processes in standard setting and revision. For instance, some of the above-mentioned instruments foresee that, before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties.

- **Some of their structural limitations:** the common element is the fact that these instruments are voluntary in nature. Private standard scheme owners or managers implement their guidelines on the basis of incentives to do so. While these can kick-start race-to-the-top situations in certain instances, they may also leave the ultimate decision to abide by one or another set of meta-guidelines to the goodwill or strategic decisions of standard setters.

### *Economic sustainability*

To succeed, be credible at the B2B level, and live up to competing schemes, private standard schemes need to ensure that investments required for compliance with their requirements are *economically* sustainable.

This paper has identified two main dimensions of economic sustainability (Section 2.4.2): 1) the provision of B2B technical and financial assistance; and 2) the efforts to ensure interoperability of items certified against private standards, both with each other, and in relation to regulatory requirements in multiple jurisdictions. Some of the above-mentioned codes of meta-principles appear to address these matters to a certain extent, but the economic sustainability of wider sustainability standards stands out as an issue where more work is required.

### *Credibility*

Credibility is a crucial criterion in the context of private sustainability standards. If a standard scheme wants to live up to the increasing competition of other schemes, it must be credible in the eyes of both consumers and GVC players.

Section 2.4.3 has introduced two possible dimensions of credibility: scientific justification and transparency in techniques to assess conformity. Some of the initiatives listed in 3.1.1 place a great deal of emphasis on credibility-related benchmarking, yet they appear to be much more cautious, or sometimes silent, regarding the scientific base of requirements contained in standards.

### *Safeguards against anti-competitive outcomes*

How to avoid the operation of private standards leading to anti-competitive outcomes and unfair exclusion of would-be GVC players? This remains an open question, and the existing meta-codes do not seem to address this issue, at least directly.

Nonetheless, while this remains a subject for further research, an argument could be advanced that the potential for anti-competitive outcomes of private standards would also be limited by improvements in terms of other indicators, including transparency, economic sustainability, credibility, and accountability.

### **3.2. Why Would “Orchestration”**

#### **Be a Suitable Approach Towards Collective Action?**

The structural limitations of the existing meta-governance initiatives for the setting and operation of private standards, coupled with the unjustifiable or unnecessary GVC-participation hindrances that can be ascribed, in certain circumstances, to the existence and operation of private standards, support the need for collective action on the part of governments.

This collective action appears to be best exerted through IGOs. Abbott and Snidal (2009), Murphy (2005), as well as other scholars, suggest that the thrust of the collective action of governments through IGOs oscillates between two governance approaches:

1. **Command and control:** whereby IGOs would direct the action of private standard setters and implementers towards specific rules, for instance by fixing the latter in a legally binding treaty. This approach is widely regarded in the literature as unlikely to achieve the expected results, because the rigidity of prospective legally binding rules applying to private commercial transactions would be opposed by many governments, or would simply be impossible to be agreed upon. The 2005-2016 WTO discussions on private standards are a case study that echoes these arguments, as discussed in Section 4.

2. **Orchestrator:** whereby IGOs would use their convening power to foster dialogue between the various stakeholders connected to private sustainability standards, and creatively set up incentives or disincentives for these actors to effectively harmonise their approaches, or even abide by a “code

of codes” (Murphy 2005) or a set of global voluntary rules on transparency, non-discrimination, minimum B2B technical and financial assistance, etc. The literature, in general, tends to favour this approach for being more realistic, flexible, and incentives-based (Figure 2).

**Figure 2: Approaches to collective action**



A third option, the role of “facilitator” presented to the far left of the line in Figure 2, is arguably being played by certain IGO initiatives. The UNFSS, the UN Global Compact (UNGC), or the ITC’s Standards Map, for instance, seem to be moving in that direction.

While they are valuable tools for convening stakeholders, fostering dialogue, and transparency, or comparing standards requirements and characteristics, these initiatives have not moved towards any kind of international harmonisation of substantive benchmarking. The desirability of such upgrading is in fact questionable, as the absence of value judgments in initiatives such as ITC Standards Map or the UNFSS has probably contributed to creating trust while maximizing the buy-in from relevant stakeholders, thus cementing their objective value as global public goods fostering transparency.

### 3.2.1 Do we need a set of globally agreed meta-guidelines?

If the need for the international community to “orchestrate” the use of “new transnational regulation” is sufficiently supported by the preceding analysis, and if it is also true, as highlighted by Fransen (2015) and other commentators, that the meta-governance tools currently available are proliferating and competing with each other in a way that

could undermine the achievement of their own objectives, then a preliminary step along the path towards a consensus-based framework for private standards would be to agree on a core set of meta-guidelines by which private standard setters, users, and implementers should abide.

The idea of creating such meta-guidelines is extensively discussed in the literature, be it in general terms (IIS 2017), in the form of a “code for codes” (Murphy 2005), or as a reference paper for private standards (see e.g. Mavroidis and Wolfe 2016). Policymakers at the multilateral level, too, have discussed this idea, and it remains to be seen whether or not they will manage to build the necessary consensus for adopting meta-guidelines (G/TBT/M/69, para. 3.372).

Such meta-guidelines would provide a normative basis for crystallising for example minimum requirements for transparency, economic sustainability, credibility, and safeguards against anti-competitive outcomes. Nonetheless, framework norms of this nature, like all other norms, would need to become living norms through acceptance, implementation, and monitoring. While these questions remain open, this paper includes a policy option that foresees a mechanism to tackle them in a coherent way (see Section 5.2.1).



### 3.3 Is There a Mandate in the 2015 UN Sustainable Development Goals?

There is no principle in public international law that bestows the exclusive power to regulate matters related to public policy concerns on governments. The SDGs provide yet another example of the public-private partnership approach towards mainstreaming sustainability in economic activities that is being promoted by the international community at the time of writing.

The SDGs include bold language which directly addresses the behaviour of MNCs in relation to sustainable production and consumption patterns, such as the following:

“(Goal 12.6) Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.” (UN 2015)

Paragraph 67 of the same UN General Assembly Resolution containing the SDGs then adds:

We call upon all businesses to apply their creativity and innovation to solving sustainable development challenges. *We will foster* a dynamic and well- functioning business sector, *while protecting labour*

*rights and environmental and health standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard*, such as the Guiding Principles on Business and Human Rights and the labour standards of the International Labour Organization, the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements. (UN 2015; emphasis added; parts and footnotes omitted)

The sections highlighted may suggest that the dichotomy between business and public policy objectives has not yet been overcome entirely. While meta-principles governing private actions aimed at implementing the SDGs, such as private standards, are not explicitly referred to, the role of governments in these matters has certainly been strongly and officially reaffirmed.

Moving from the text of the SDGs and the *2030 Agenda for Sustainable Development* to their living reflections in high-level policy circles, namely the G20, one can also find strong calls for governmental and IGO engagement in relation to the need to orchestrate private initiatives towards sustainability, as discussed in Box 6.

#### Box 6: The G20 and international concerted action on private standards

A group of policy analysts from various institutions, including the German Development Institute, ISEAL, and various universities, has analysed in depth the prospects for decisions at the G20 Summit of July 2017, launching the idea of a “Global Pact for Sustainable Trade”, as follows:

“Set up international forums for defining and/or harmonizing as well as promoting sustainability standards at the international level and/or upscale existing ones such as UN Forum on Sustainability Standards. - Encourage the private sector to foster environmental sustainability and to enhance social and human rights due diligence by providing applicable guidelines for daily business operations, in particular for SME’s. - Feed other policies (...) with these new, clarified standards in order to ensure inclusive, socially and environmentally sustainable trade and investment.”

Source: *Think20 Dialogue* (2017).

These theoretical discussions on the role of the international community in placing or not placing boundaries around the establishment and operation of private standards has clearly

been reflected in policymakers' discussions. The next section analyses some aspects of such discussions at the multilateral and bilateral levels.

## 4. LESSONS FROM MULTILATERAL AND BILATERAL EXPERIENCES

Concerns related to the market access impact, credibility, design, and operation of private standards have been officially voiced at the WTO since 2005. However, in spite of significant efforts by WTO Members and the growing importance of private standards in GVCs, the discussion at the WTO has not found a way forward. Likewise, albeit from a different angle, discussions on standardisation policies and practices have also proved difficult in the context of negotiating bilateral trade agreements.

This section opens with a brief review of the evolution of 12 years of WTO discussions on private standards, focussing on key documents from them. Subsequently, it presents the existing WTO disciplines and technical assistance mechanisms that have been, or could be, associated with the debate on private standards. It then moves to consider preferential trade agreements at the bilateral or small-club geometry, and discusses relevant norms applicable to private standards governance. It concludes by drawing lessons from both the multilateral and bilateral experiences, which provide a starting point needed to articulate the policy options presented in Section 5.

### 4.1 State of WTO Discussions and Key Documents

WTO discussions on private standards started with a “specific trade concern” raised by Saint Vincent and the Grenadines at the WTO Committee on SPS Measures (SPS Committee) (G/SPS/R/37/Rev.1, paras. 16-20). The concern of Saint Vincent related to the reported negative impacts of the EurepGAP (today GlobalGAP) certification on exports of fresh fruits to the European Union (EU), with a specific focus on market access barriers faced by small farmers.

Various Latin and Central American countries supported the submission of Saint Vincent: some of them reported similar exports

concerns, while others highlighted the need to clarify the scope of application of Article 13 of the SPS Agreement (see Section 4.2.1). Argentina, for instance, recalled that:

...the international community had generated international agreements to ensure that trade standards were not *unnecessarily* stringent so as to act as barriers to international trade, and countries had devoted time and financial and human resources to attend all the international meetings where standards were discussed, developed and implemented. If the private sector was going to have *unnecessarily* restrictive standards affecting trade, and countries had no forum in which to advocate some rationalization of these standards, twenty years of discussions in international fora would have been wasted. (G/SPS/R/37/Rev.1, Para. 20; emphasis added)

In response, the EU clarified that EurepGAP was a private sector entity whose practices did not conflict with its internal laws.

These discussions characterised the period of 2005 to 2007, during which various information sessions took place, with the participation of external observer organisations such as the UN Conference on Trade and Development (UNCTAD). The result has been that SPS-related private standards became a specific agenda item at the SPS Committee, as of June 2007. What next?

WTO Members, the WTO Secretariat, and observer organisations presented papers and studies in the period from 2007 to 2008 (see e.g. G/SPS/GEN/802), leading to the SPS Committee’s adoption of a formal work programme in October 2008 (G/SPS/W/230). This work programme included consideration of 12 “actions,” of which only the five reported in Box 7 have later been adopted by the SPS Committee (G/SPS/55, March 2011).

**Box 7: Excerpts from the 12 “actions” included in the work programme of the SPS Committee in 2008**

- Action 1: “The SPS Committee should develop a working definition of SPS-related private standards and limit any discussions to these.”
- Action 2: Regular and reciprocal exchanges of information between the SPS Committee and the Codex, OIE, and IPPC.
- Action 3: WTO Secretariat to inform the SPS Committee of relevant discussions taking place in other WTO bodies.
- Action 4: “Members are **encouraged** to communicate with **entities** involved in SPS-related private standards **in their territories** to sensitize them to the issues raised in the SPS Committee and underline the importance of international standards established by the Codex, OIE and IPPC.”
- Action 5: Possibility of dissemination of informative material on the importance of “**international SPS standards.**”

Source: G/SPS/55; emphasis added; sections outside quotation marks omitted or summarised.

To date, the majority of the discussions on these actions have concentrated on Action 1, i.e. to agree on a “working definition of SPS-related private standards.” An electronic working group (e-WG) was established, and in March 2015 the following working definition was presented by China and New Zealand as co-stewards of the e-WG (G/SPS/W/283):

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*. (emphasis added)

The keyword here is *commercial transaction*. Most of the WTO Members who oppose the idea that the SPS Agreement is applicable to private standards, do so on the grounds that private standard requirements are part of commercial transactions between private entities, hence falling outside the general scope of application of WTO disciplines (see Sections 4.2.1 and 4.2.2).

While the working definition proposed by China and New Zealand did not find consensus in

the WTO, it should also be noted that Action 3 makes reference to relevant discussions happening in “other WTO bodies.” References to such discussions can be found, for instance, in the minutes of the June 2016 meeting of the TBT Committee, as well as in the proceedings of a workshop on sustainable government procurement organised by the WTO Committee on Government Procurement (see Section 4.2.3).

At the TBT Committee in June 2016, the delegation of China illustrated the initiative of preparing a paper on “Best Practice Guidelines regarding Private Standards.” China also recalled that “... during the 5th, 6th and 7th Triennial Reviews [of the operation of the TBT Agreement], it had been agreed to exchange information and experiences on ‘reasonable measures’ taken by Members to ensure that non-governmental standardizing bodies involved in the development of standards within their territories, accepted and complied with the [TBT] Code of Good Practice” (G/TBT/M/69, para. 3.372).

China’s intention to prepare this paper containing best practice and meta-guidelines for private standards has been expressly supported by the representatives of India,

Egypt, Brazil, the Russian Federation, South Africa, and Pakistan. On the other hand, the US, EU, and Japan expressed cautious views or opposition (G/TBT/M/69, paras. 3.373-83).<sup>1</sup>

#### 4.2 WTO Disciplines and Technical Assistance Mechanisms of Relevance to Private Standards

As noted in the previous sub-section, during official WTO talks on private standards some Members had highlighted the need to clarify the scope of application of Article 13 of the SPS Agreement. Similar discussions took place at the TBT Committee with regard to Article 4.1 of the TBT Agreement. Why has this been the case? What are the WTO disciplines associated or associable with the debate on private standards? Could or should such disciplines be applied to the way private standards are designed and implemented?

Many commentators have addressed these questions through complex legal analyses, underscoring that the WTO is clearly a government-to-government set of rights and obligations, yet presenting equally clear margins of applicability of its obligations to the way member governments interact with private entities in certain circumstances. Along these lines, some scholars have reached the conclusion that, even if ambiguously phrased, the relevant WTO rules could apply to the design and implementation of private standards.

The core rules in question are those of the SPS and TBT Agreements, along with what their implications are in the context of a dispute *vis-à-vis* the rules on jurisdiction of the WTO Dispute Settlement Understanding (DSU). Less attention has been given in the literature, on the other hand, to the Plurilateral Agreement on Government Procurement (GPA). These four instruments will be discussed in turn, followed by an introduction to work of the WTO-based Standards and Trade Development Facility (STDF) and the Enhanced Integrated Framework (EIF).

##### 4.2.1 The SPS Agreement

The SPS Agreement applies to “food safety and animal and plant health measures” with direct or indirect international trade impacts. These include e.g. governmental food safety measures relating to maximum residue levels (MRLs) of pesticides in food and feeds, or measures aimed at avoiding the spread of pests and diseases.

The core feature of the SPS Agreement, and also its main difference from the TBT Agreement, is that the SPS Agreement requires WTO Members to base their trade-related SPS measures on science. To do so, in very simple terms, WTO Members have two main options: either conducting a detailed risk assessment exercise in relation to the object or situation they wish to regulate through an SPS measure, or relying to varying degrees on the international SPS standards set by three international entities explicitly mentioned in the SPS Agreement: Codex, the OIE, and the International Plant Protection Convention (IPPC).

If it is clear that the SPS Agreement applies to trade-related SPS measures enacted by governments in their national territories, it is also true that Article 13 of the SPS Agreement, named “Implementation,” is ambiguous in relation to the applicability of the obligations it contains. Article 13 SPS states that:

Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take *such reasonable measures as may be available to them to ensure that non-governmental entities within their territories*, as well as regional bodies in which relevant entities within their territories are members, *comply with the relevant provisions of this Agreement*. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-

<sup>1</sup> At the time of writing, China had not yet presented the paper.

governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement. (emphasis added)

Various legal scholars have analysed this provision in depth, reaching the conclusion that, in theory and in the context of a dispute, there could be grounds to hold a WTO Member accountable for the actions of a private entity within its national territory (see e.g. Mavroidis and Wolfe 2016, IIS 2017). Nonetheless, the issue has not found a stable solution at the WTO SPS Committee, where disagreement as to the scope and margins of applicability of Article 13 to the case of SPS-related private standards appears to persist.

#### 4.2.2 The TBT Agreement

The TBT Agreement applies to technical regulations (mandatory measures), standards (voluntary), and conformity assessment procedures, as defined in Annex 1 to the Agreement. These measures include technical regulations and standards applied in pursuance of legitimate policy objectives, e.g. human health and safety, consumer or environmental protection, etc.—the list is open. The scope of application of the TBT Agreement thus is arguably broader than that of the SPS Agreement.

Similarly to the SPS Agreement, however, the TBT Agreement contains a provision, Article 4 on the “Preparation, adoption and application of standards,” which states the following:

Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the ‘Code of Good Practice’). *They shall take such reasonable measures as may be available to them to ensure that local government*

*and non-governmental standardizing bodies within their territories*, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, *accept and comply with this Code of Good Practice*. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice. (paragraph 1)

Scholars’ discussions on the scope of application of Article 4.1 TBT, particularly in conjunction with Article 3 TBT, have been similar to those mentioned in relation to Article 13 of the SPS Agreement (see e.g. Arcuri 2013).

Article 4.1 refers to the TBT Code already introduced in Section 3.1.1 above, and included as Annex 3 to the TBT Agreement. To recall, the TBT Code mirrors the key legal principles of the TBT Agreement, particularly in relation to the avoidance of unjustifiable or unnecessary discrimination in relation to the setting and operation of standards by a “standardizing body.” However, its acceptance is voluntary, arguably making the TBT Code a legally weaker instrument *vis-à-vis* the mandatory language used by the TBT Agreement to discipline technical regulations.

#### 4.2.3 The Government Procurement Agreement

The GPA is one of the “plurilateral” agreements of the WTO. This means that it applies only to the WTO Members who have ratified it. The GPA covers “procurement by any contractual means, including through such methods as purchase or as lease, rental or hire, with or without an option to buy, including any combination of products and services” (Art. I.2) carried out by the procuring entities, and above the minimum thresholds, specified in each Party’s Appendix I. These may include



entities ranging from ministerial departments to museums and port authorities.

What, then, is the connection between the GPA and private standards? As suggested by Corvaglia (2016), it arises for instance from the increasing use that public procurement authorities make of the guidelines and requirements of private standards, particularly in pursuance of social and environmental protection objectives.

The WTO Committee on Government Procurement, on occasion of a Symposium on Sustainable Procurement held in February 2017, explicitly discussed private sustainability standards, currently recommended as reference standards for sustainable public procurement initiatives. This was, for instance the case in Switzerland, where the authority in charge of coordinating procurement policies for public sector construction and property at the federal and local government levels, KBOB, explicitly recommended that the sustainable procurement of wood be made in accordance with “a specially established standard,” or “with the Forest Stewardship Council (FSC) certification and Programme for the Endorsement of Forest Certification (PEFC)” (GPA/W/341, p. 12).

#### 4.2.4 The Dispute Settlement Understanding

The DSU is the WTO’s “civil procedure code:” it disciplines how and why claims that provisions contained in the “covered agreements” of the WTO have been violated can be brought before quasi-judicial adjudicatory bodies (named panels), or solved through other diplomatic means. As the DSU mechanisms for solving disputes between WTO Members have proven quite successful thus far and, considering that the WTO agreements covered by the DSU include the SPS and TBT agreements, it is possible to infer that having SPS and TBT rules applying (in one way or another) to private standards would impose on WTO Members a strong incentive to exercise an effective oversight over the setting and operation of such standards.

Article 6.2 of the DSU states that, to have a panel hearing a violation complaint (or other types of complaints foreseen under the DSU),

a Member’s request for the establishment of a panel would have to “identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.”

If one thinks of the language of provisions such as Article 13 SPS or Article 4.1 TBT, where the obligation on Members is to take “such reasonable measures as may be available to them” to avoid breaches of the relevant rules that arise from the behaviour of private entities within their national territories, what would be the measure to be challenged?

In such a case, it would probably be an omission to act, and not a positive measure, that would come under scrutiny. Would that be possible? The WTO Appellate Body (AB), the standing tribunal in charge of hearing appeals on matters of law after a panel has issued its report on a given dispute, has clarified that the term “measure” in Article 6.2 of the DSU includes “a government’s non-binding administrative guidance and also an omission or a failure to act on the part of a Member” (WT/DS60/AB/R at footnote 47). Likewise, an “informal instruction” issued by a government that would lead to a violation of a WTO rule might also be considered a “measure” (BISD 35S/116, para. 117).

#### 4.2.5 The Standards and Trade Development Facility and the Enhanced Integrated Framework

This overview concludes with the STDF, which is a “a global partnership that supports developing countries in building their capacity to implement international sanitary and phytosanitary standards, guidelines and recommendations as a means to improve their human, animal and plant health status and ability to gain and maintain access to markets” (STDF website).

The work of the STDF is relevant to private standards in the SPS sector, because the assistance provided by and through the STDF to developing and least-developed WTO Members in relation to their SPS compliance efforts is,

obviously, not limited to cases of compliance with governmental SPS measures.

The mandate of the STDF is thus particularly open, and embraces situations where smallholders or smaller GVC players find it difficult to deal with private SPS requirements. It also covers initiatives to “increase awareness, mobilize resources, strengthen collaboration, identify and disseminate good practice,” (STDF website) and work related to public-private partnerships (PPPs) in the SPS compliance domain.

Likewise the EIF—a multi-donor programme supporting least-developed countries’ (LDCs) efforts to play a more active role in the global trading system—has coordinated technical assistance work in the area of compliance with SPS-related requirements (governmental measures). It also appears that EIF analyses may have dealt, directly or indirectly, with private standard requirements in some countries and sectors, including in the SPS domain (see e.g. STDF and EIF 2016).

### 4.3 What Has Blocked the Discussions at the WTO Thus Far?

This sub-section, based on an analysis of the publicly available WTO Documents mentioned above, aims to foster open reflection on the potential causes that could explain the lack of solutions in WTO discussions on private standards, while recalling that these discussions have created value in terms of e.g. information and knowledge sharing, open dialogue, awareness raising, and issue scoping.

#### 4.3.1 Discussions stuck on legal and semantic issues

From the documents available, it appears that the discussion at the WTO has arguably been held up by legalistic or terminological arguments. This is not to say that terms and definitions are not important: they may have

future implications; hence WTO members are right to be careful about language.

It might seem surprising that such meticulous attention has been given even to non-legally binding definitions, such as the unresolved e-WG definition of SPS-related private standards. Nonetheless, such an approach might be motivated by the fear of creating a precedent, and possibly fostered by the fact that no dispute against a member’s behaviour in relation to a private standard scheme has ever been brought before the WTO’s judiciary.

This lingering tension on the potential for a dispute—possibly further fuelled by the use the AB has made of a set of TBT Committee principles in the context of a 2013 decision<sup>2</sup>—might help to explain the cautious approach of WTO Members in relation to the semantics of Committee language on private standards.

#### 4.3.2 Too much emphasis on negative trade impacts

From the publicly available reports of discussions held at the WTO, another element seems to have been blocking progress: too much emphasis seems to have been given to the alleged negative trade impacts attributable to private standards.

“Proliferation” of schemes, for example, has been associated in discussions with the concept of “confusion,” or even with the idea of (undue or unjustifiable) multiplication of requirements. Yet is proliferation necessarily a downside of private standards? Could there also be welfare-enhancing outcomes as schemes compete with each other to gain “subscribers” among GVC buyers and sellers? The discussion presented in Section 2 on the economic sustainability of private standards suggests that a race-to-the-top situation can materialise as a consequence of schemes competing with each other on credibility and interoperability grounds.

2 In *US - Tuna II* (WT/DS381/AB/R, para. 370-2), the AB relied on the “Decision on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement” (G/TBT/9, para. 20 and Annex 4) developed by the TBT Committee in 2000, to ascertain whether an available international standard upon which the US could have relied existed.



In addition, the official discussions on the trade effects of private standards held at the WTO seem to have favoured the “trade-hindrance” side of the story; whereas these might be more pressing as issues to be brought up, a thorough analysis of the trade-creating effects of implementing private standards could also help to shed light on potential ways forward.

#### 4.3.3 Lack of clarity on the specific nature of the problem being addressed

As introduced in Section 2, some of the trade-restrictive effects of private standards might be attributed to general supply-side constraints, rather than to specific failures of private standards.

The SPS Committee has tried to address this issue in the context of its remarkable work on SPS-related private standards. In 2009, for instance, it issued a questionnaire to Members (G/SPS/GEN/932), asking 19 questions, including the following:

- What is the main concern regarding private standard(s) faced by your export product(s)?
- Do the private standard requirements for the product in question correspond to the relevant official import requirements for that same product?
- Negative (trade-inhibiting) and positive (trade-creating) effects of private standards?
- Information on conformity assessment methods applied to private standards.

Arguably, these were steps in the right direction. In the document containing the questionnaire and the replies, a comment highlighted that this consultation would have led to the preparation of a “comparative study on the effects of private SPS standards.” This study does not appear to be available.

#### 4.4. Notes from Bilateral or Small-Club Trade Agreements

The practice of the international community to negotiate “deep-integration” free trade agreements (FTAs) at the bilateral or small-club level has an important bearing on the present discussion of standards in general, particularly in relation to matters of harmonisation, equivalence, or mutual recognition of conformity assessment procedures or results (see e.g. Disdier et al. 2015, discussing North-South agreements, and Correia de Brito et al. 2016 for an OECD perspective).

Looking more specifically at private standards, some of the recently negotiated, so-called “mega-regional” agreements—e.g. the draft Trans-Pacific Partnership (TPP) Agreement or the 2016 agreement between Canada and the EU (CETA)—include chapters on regulatory cooperation, as well as sections dedicated to sustainable development issues mostly concerning environmental and social matters.

Tai (2017), analyses relevant provisions in the bilateral or small-club FTA practice by the US in relation to private environmental governance. The main finding from this work highlights a shift in the nature of the relevant FTA rules: from rules encouraging businesses to use private environmental governance tools, found in earlier FTAs of the US, to the best-endebour language of Article 20.11 of the TPP Agreement, which is novel in that it constrains the voluntary environmental governance actions that the parties to the TPP should encourage, as follows:

Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, *each Party should encourage those entities and organisations to develop voluntary mechanisms that*, among other things:

(a) *are truthful, are not misleading and take into account scientific and technical information;*

(b) *if applicable and available, are based on relevant international standards, recommendations or guidelines, and best practices;*

(c) *promote competition and innovation;* and

(d) *do not treat a product less favourably on the basis of origin.* (TPP Article 20.11, Subpart 3; emphasis added)

In concluding the analysis of this provision, Professor Tai submits that:

This language was much more specific than that used in prior United States free trade agreements. It provided explicit factors that parties should promote, even in the context of entirely private standards/governance methods: truthfulness, scientific grounding, basis on international standards or best practices, promotion of competition and innovation, and neutrality on country of origin. *This language in the TPP—and potential language in future trade agreements— provides an opportunity for scholars interested in private governance to observe the interactions between public law and future developments in private governance.* (emphasis added; footnotes omitted)

Moving on to the case of CETA, as an example of EU and Canadian preferential FTA practice, Article 22.3 on “Cooperation and promotion of trade supporting sustainable development,” in the chapter on trade and sustainable development, states that:

[...] each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, including by:

(a) *encouraging the development and use of voluntary schemes relating to the sustainable*

*production of goods and services, such as eco-labelling and fair trade schemes;*

[...];

(c) *encouraging the integration of sustainability considerations in private and public consumption decisions...* (CETA Article 22.3, Subpart 2; emphasis added; parts omitted)

This provision encourages the use of voluntary schemes, but sets no limits to the private governance actions that the parties should encourage. No other provision in CETA appears to do so, while an analysis of previous trade deals of the EU, such as the EU-South Korea FTA (EUKOR) of 2011, suggests that only provisions encouraging the parties “to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade” are included in the text (EUKOR Article 13.6, Subpart 2).

In more general terms, scholars contend that agreeing on matters related to standardisation policies, be they at the public or private sector level, is extremely difficult even in a bilateral trade negotiations. Bremer (2016), for example, suggests that in the Transatlantic Trade and Investment Partnership (TTIP) talks the US and the EU were faced with fundamental differences in both “private standardization systems and governmental standards policies.” At the root of these differences are cultural, historical, and political reasons, Bremer argues, but also fundamental discrepancies across the respective municipal legal frameworks.

#### 4.5. Lessons Learned

The attempts made by WTO members to set up a consensus-based framework on private standards have engendered a remarkable process of information sharing both within and outside the WTO, but have thus far remained without resolution. Still, WTO talks in the period from 2005 to 2016 have resulted in key learning points for the international community:

- The discussion ought to be focused more pragmatically on trade impacts, i.e. avoiding the risk of getting stuck in semantics;
- The positive aspects of private standards too need to inform the discussion more prominently; and
- More factual and quantitative information is needed on the unnecessary or unjustifiable buyer access hurdles that can be exclusively attributed to private standards, hence discounting the effects of other structural or generic factors, such as lack of economic/ quality infrastructure and other supply-side constraints.

The study of FTA provisions with a direct or indirect bearing on private governance

initiatives appears to be a promising area for further research. This might include, for instance, a comprehensive mapping exercise of such provisions. Along similar lines, a mapping exercise of laws and regulations at the municipal level, that in some way constrain or set boundaries on private governance initiatives, for instance against transparency and credibility requirements, would be really helpful to draw a picture of the interactions between public law and private contractual freedom in relation to private sustainability standards.

Considering these important lessons, the subsequent section will present a non-hierarchical menu of mutually reinforcing policy options aimed at supporting various types of collective action concerning the matter at hand.

## 5. POLICY OPTIONS

Informed by the considerations made so far, Section 5 presents *non-hierarchical, mutually reinforcing options* for international concerted action on private standards. Considering that the international community may or may not reach an agreement on a set of global meta-guidelines for the setting and operation of private standards, as argued in Section 3.2.1, the proposed options are subdivided between:

1. Options that can be implemented without a globally agreed set of meta-guidelines for private standards; and
2. Options that entail global agreement on a set of meta-guidelines for private standards.

### 5.1 Options That Can Be Implemented Without a Globally Agreed Set of Meta-Guidelines

This paper argues that, irrespective of global agreement on a set of meta-guidelines, the following options are available to improve the governance and the operation of private standards, through actions taking place both inside the WTO (Options 1-3) and outside of it (Options 4-5), as follows:

1. Creating a joint SPS-TBT transparency mechanism for private standards;
2. Establishing a public-private cross-pollination mechanism under the Agreement on Government Procurement;
3. Launching a work programme on sustainability-related PPPs within the framework of the Trade Facilitation Agreement; and
4. Expanding the work programme of the UNFSS so as to officially include international, regional, and national standards bodies;
5. Using the UN Global Compact to promote transparency and accountability principles.

#### 5.1.1 Creating a joint SPS-TBT transparency mechanism for private standards

As noted in the literature, both the similarities between the SPS and TBT Agreements and the analogies between the discussions held in the respective committees in relation to private standards would suggest that the two committees would do better address to the matter jointly (see e.g. Thorstensen et al. 2015). Yet the question lingers: *how* to address the matter without having it captured by possibly irreconcilable legalistic discussions?

To respond to the concerns raised by WTO Members in relation to the availability of information on the establishment and functioning of private standard schemes, a feasible option could be to set up a “transparency mechanism for SPS-TBT-related private standards,” e.g. through a WTO General Council Decision.

Provisions on notifications and surveillance of implementation are incorporated in virtually all WTO Agreements. This notably includes the SPS and TBT Agreements, for which an integrated electronic platform for notifications—“ePing” (WTO website)—was launched on 8 November 2016. However, no notifications of private standard schemes are foreseen under the existing system, arguably due to Members’ disagreement on the applicability of the SPS and TBT agreements to such schemes (see Sections 4.2.1 and 4.2.2).

Notification mechanisms under the WTO have evolved significantly since the establishment of the organisation, showing dynamism. For example, the establishment of a “Transparency Mechanism for Regional Trade Agreements” through a WTO General Council Decision in 2006 (WT/L/671) attests to this trend. In particular, it is interesting to highlight the following elements of this 2006 Mechanism for the purposes of the present discussion:

- In establishing the mechanism, WTO Members noted that “trade agreements of a mutually preferential nature (“regional trade agreements” or “RTAs”) *have greatly increased in number and have become an important element in Members’ trade policies and developmental strategies;*”
- WTO Members also noted the *systemic interest of enhancing transparency and understanding* of RTAs, while taking account of the resource and technical constraints of developing country Members;
- WTO Members thus established an “*early announcement*” mechanism, as well as a system whereby the WTO Secretariat would prepare a “factual presentation” of a notified RTA, based on the data provided by Members, as well as on data collected by the WTO Secretariat in cooperation with the Members concerned;
- Finally, it was clarified that such factual presentations “*shall not be used as a basis for dispute settlement procedures.*”

Even though RTAs and private standards are clearly distinct trade topics, it is remarkable that they both show an increase in number over the years, increased importance in Members’ trade policies and development strategies, as well as increased systemic importance for WTO Members. The transparency mechanism for RTAs, originally enacted on a provisional basis, proved to be a “resounding success” (see e.g. WT/GC/W/605), further supporting the idea that a similar mechanism could be applied to the case of SPS-TBT-related private standards.

#### 5.1.2 Establishing a public-private cross-pollination mechanism under the GPA

A complementary option would be to equip the GPA with a formal mechanism to encourage the creation of dialogue, as well as the cross-pollination of policies, between public and private entities that engage in sustainable procurement. In this connection, the fact that the GPA applies only to the WTO Members who have thus far ratified it would further support

this option as one to be combined with others that apply across the board.

It is remarkable that various speakers at the WTO’s February 2017 Symposium on Sustainable Procurement highlighted the need to coordinate public and private sustainable purchasing policies, while sharing information on a number of existing initiatives. One of these was the US Sustainable Purchasing Leadership Council (SPLC), in which the interplay between public and private sustainable procurement reportedly takes place regularly. It was recalled, for example, that the SPLC is “a broad coalition with 165 members (including some companies from the Global 500, e.g. Lockheed Martin and Microsoft, and some large government buyers, e.g. US General Services Administration and the State of California)” (GPA/W/341, p. 12).

Such public-private cross-pollination processes appear to have potential to support efforts towards more transparency and non-discrimination in the use of private standards. If public and private sustainable procurement policies tend to converge, and when the former already abide by the non-discrimination and anti-corruption principles of the GPA, it can be safely inferred that the GPA framework can be really helpful in supporting international concerted action on private standards.

Annex E on the “Agreed Work Programme” of the GPA (GPA/113) includes a decision on sustainable procurement, whereby the GPA Committee shall examine:

1. The objectives of sustainable procurement;
2. The ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies;
3. The ways in which sustainable procurement can be practiced in a manner consistent with the principle of “best value for money”; and
4. The ways in which sustainable procurement can be practiced in a manner consistent with parties’ international trade obligations.



Whereas the same document, under Annex B, also contains guidelines on future additional work programmes, notably including “a review of the use, transparency and the legal frameworks of public-private partnerships, and their relationship to covered procurement.”

Thus, it appears that the elements needed to use the GPA as a vehicle to transfer the non-discrimination and transparency rules it contains to the sustainable procurement practices of the private sector are lined up and ready for consideration by WTO Members.

#### 5.1.3 Launching a work programme on sustainability-related PPPs under the framework of the TFA

The 2014 Trade Facilitation Agreement of the WTO (TFA, WT/L/940) is aimed at modernising and speeding up custom procedures, e.g. for the inspection, release, and clearance of imported goods. The TFA also includes important transparency rules on the publication of laws and regulations affecting trade flows; arguably, as it is applied in practice, it acts as a powerful anti-corruption tool.

The TFA has strong connections with both the SPS and TBT Agreements (see e.g. Ayral 2016), for example owing to its focus on procedures related to inspections, release, and clearance of goods. One example is its Article 8 on border agency cooperation, which essentially encourages the cooperation within and across

WTO Members of border agencies in charge of controls and procedures applicable to imported goods, as well as to goods in transit.

In practice, and relating to Article 8 TFA, several case studies document the positive effects of PPPs on border controls related to SPS issues, particularly in capacity-constrained countries (STDF 2013). In this connection, the Canadian North-South Institute (NSI 2012) analyses various models of PPPs (not limited to border inspections), including in particular a “coalition model,” a “company-led model,” a “business-NGO [non-governmental organization] alliance model,” and an “NGO-led model.”

These are, of course, instances where private standard setters or implementers are collaborating directly with GVC players in developing countries. As a consequence, when such PPPs relate to the furthering of sustainable development objectives, an official work programme under the TFA could support them.

#### 5.1.4 Formally expanding the work programme of the UNFSS

The UNFSS, introduced above under Sections 2 and 3, is currently in charge of knowledge sharing about VSS, which it describes as akin to the concept of private standards referred to in this paper. Box 8 gives a description of the work of the UNFSS drawn from its website.

#### Box 8: Objectives of the UNFSS

The United Nations Forum on Sustainability Standards (UNFSS) is a platform created to provide information and analysis on *voluntary sustainability standards—VSS*—(often also termed “private standards” related to occupational safety, environmental, social or animal welfare issues). The UNFSS has a particular focus on the potential value of VSS as tools for developing countries to achieve their sustainable development goals. At the same time, the UNFSS addresses the potential trade or development obstacles these standards may create, with particular emphasis on their impact on small-scale producers and less developed countries. The UNFSS aims to facilitate a dialogue for the exchange of knowledge on these issues and provide a forum for intergovernmental actors to communicate among each other and engage with key target groups (producers, traders, consumers, standard setters, certification bodies, trade diplomats, relevant NGOs and researchers) to address their information needs and influence concerned stakeholders. The UNFSS will deliver analytical and empirical work and assist—upon specific request from developing countries—with analysis of VSS in their country’s context and in implementing UNFSS recommendations.

Source: UNFSS website.



The work of the UNFSS arguably provides great value in avoiding overlaps and identifying problems related to private standards. Similarly to ITC's Standards Map (whose staff representatives participate as one of the UN entities of the steering board of UNFSS) then, the work of the UNFSS concentrates on factual considerations and does not appear to apply any value judgment as to the upsides or downsides of specific VSS initiatives.

Against this backdrop, experts have raised the argument that it would be beneficial to expand the scope of the UNFSS platform so as to formally include developers of sustainability standards at large (see e.g. those listed in Box 5). There is already evidence of synergies between the work of the UNFSS and such international standards developers: the UNFSS 2016 Flagship Report, for instance, includes contributions from various experts, including ISO experts, in Chapter 2 whose contributions arguably add real value towards a more open and well-informed understanding of the upsides and downsides of private schemes.

This paper suggests that standards in general, including private or voluntary standards, should be considered for their sustainable development impacts, be the latter direct or indirect, intended or unintended, declared or implied, positive or negative. As a consequence, a formal expansion of the UNFSS family would bring under the UNFSS umbrella those international standardisation hubs that also work on the development of sustainability standards, or of standards with sustainable development impacts, thus fostering dialogue, understanding, exchange of experiences and best practices, and work towards global harmonisation of such best practices.

#### 5.1.5 Using the UN Global Compact to promote transparency and accountability

Finally, a point similar to the one discussed with regard to the UNFSS (Section 5.1.4) can be made when analysing the functioning of the UNGC, with a key difference: here the focus is CSR in general, and CSR codes at the company level in particular. The body of literature available on these topics is immense and probably deserves a dedicated analysis from the perspective of setting and operating meta-principles for private standards. In fact, as generally formulated as they can be, company codes relating to CSR can be considered private standards that impose minimum ethical requirements and contribute to create relevant trade usages.

It appears that the UNGC has thus far been very successful in achieving its objectives. CSR codes appear to have been able to shape international trade transactions quite substantially (see e.g. Schwenzer 2012). The UNGC, as a private initiative hosted by the UN, has also managed to grow impressively in terms of number of companies subscribing to it, some 9,000 companies and 4,000 “non-businesses” (e.g. CSOs and academia) at the time of writing. To recall, these entities subscribe to the following set of ten core principles:

- Principle 1:<sup>3</sup> Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2:<sup>4</sup> make sure that they are not complicit in human rights abuses.
- Principle 3:<sup>5</sup> Businesses should uphold the freedom of association and the effective

3 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-1>

4 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>

5 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-3>

recognition of the right to collective bargaining;

- Principle 4:<sup>6</sup> the elimination of all forms of forced and compulsory labour;
- Principle 5:<sup>7</sup> the effective abolition of child labour; and
- Principle 6:<sup>8</sup> the elimination of discrimination in respect of employment and occupation.
- Principle 7:<sup>9</sup> Businesses should support a precautionary approach to environmental challenges;
- Principle 8:<sup>10</sup> undertake initiatives to promote greater environmental responsibility; and
- Principle 9:<sup>11</sup> encourage the development and diffusion of environmentally friendly technologies.
- Principle 10:<sup>12</sup> Businesses should work against corruption in all its forms, including extortion and bribery.

The way companies and non-businesses then implement these principles and also report about implementation is for each entity to decide autonomously. This, in turn, has been a major point of discussion and concern in the literature and in CSO circles; standardised approaches to sustainability reporting, such as the Green Reporting Initiative, have emerged as a response to these concerns.

Building on the experience and network of the UNGC, a “Principle 11 on the responsible use of private standards” could be conceivable as an additional bottom-up tool to further spread and promote best practices and meta-principles for private standards.

## 5.2 Options That Entail Global Agreement on a Set of Meta-Guidelines

This paper argues that the following option is also available to improve the global governance and the operation of private standards: using a model of international regulatory cooperation.

### 5.2.1 Using a model for international regulatory cooperation

If the objective of international concerted action on private standards is twofold and consequential, i.e. first to establish a set of globally harmonised meta-guidelines, and second to decide how to monitor and enforce it, an option for potentially addressing both issues within the same UN framework is provided by the “International Model for Transnational Regulatory Cooperation Based on Good Regulatory Practice”, Recommendation L of the UN Economic Commission for Europe (hereinafter UNECE 2015). This provides a:

...voluntary framework for regulatory cooperation that facilitates market access through the use of good regulatory practice and options for establishment of sectoral arrangements between interested UN member countries.

To avoid any concern that developing countries might be excluded from this process, it is important to stress that the work of the UNECE in this field is open to the entire UN Membership, thus not exclusively to countries within the UNECE Region.

In Annex A, UNECE (2015) suggests that the main instrument to be preliminarily established by cooperating countries is a common regulatory arrangement (CRA) document. In the present case, this would be the set of meta-guidelines for private standards discussed in Section 3.

6 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-4>

7 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-5>

8 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-6>

9 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-7>

10 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-8>

11 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-9>

12 <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10>

Annex A then sets out the core elements that such a CRA document should include. Applying these elements to the present case of meta-guidelines for private standards entails the following:

- **Statement of Scope:** the definition of the standard schemes and relevant mechanisms, such as conformity assessment, to which the CRA would apply;
- **Product requirements:** the substantive meta-requirements by which private standards should abide, such as transparency, credibility, economic sustainability, controls for anti-competitive practices, etc.;
- **Reference to standards clause:** here, an open list of international standards relating e.g. to human rights, social and environmental protection, economic resilience, food/products quality/safety etc. could be included as a common reference framework for private standards, with a view to avoiding arbitrariness;
- **Compliance clause:** this would require establishing a mechanism for how private standard setters and operators can demonstrate that they comply with the CRA—this is akin to establishing a meta-conformity assessment procedure for

private standards, with the choice of relevant mechanisms completely free;

- **Market surveillance clause:** this would be a necessary user-based mechanism for denouncing cases where a private standard scheme does not comply with the CRA; at this level of meta-governance, a name and shame forum could prove effective, and create incentives towards voluntary compliance with the CRA.

To support implementation and monitoring, Annex B of UNECE (2015) makes available an institutional framework and relevant mechanisms to facilitate concerted efforts. These include a process of registration and a call for participation, all administered by the UN Secretariat to the benefit of the entire UN Membership.

### 5.3 Comparative Analysis of Proposed Options

By creating a matrix for qualitative estimates of strengths, weaknesses, opportunities, and threats (SWOT), Table 3 offers a tool to compare the policy options presented in Sections 5.1 and 5.2.

To recall: the proposed options are not mutually exclusive, but rather fully complementary in nature. All of them can, in principle, can be implemented in parallel. Moreover, this analysis is not meant to be exhaustive.

Table 3: SWOT analysis of policy options proposed

Policy Option	Strengths	Weaknesses	Opportunities	Threats
<i>Options that can be implemented without a globally-agreed set of meta-guidelines</i>				
<b>SPS-TBT transparency mechanism for private standards</b>	<ul style="list-style-type: none"> <li>- Low transaction costs.</li> <li>- Existing stock of knowledge and experience.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing convergence between SPS-TBT notification systems.</li> </ul>	<ul style="list-style-type: none"> <li>- Political blockage.</li> </ul>
<b>GPA work programme on cross-pollination</b>	<ul style="list-style-type: none"> <li>- Already an element of the GPA work programme.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially significant transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing trends at the national level.</li> </ul>	<ul style="list-style-type: none"> <li>- If implemented in isolation would improve but not solve the main issues at the full WTO membership level.</li> </ul>
<b>Sustainability-related PPPs in the TFA framework</b>	<ul style="list-style-type: none"> <li>- Level of interest in technical assistance and financial activities connected with implementing the TFA.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially medium-level transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Leveraging existing trends at the country level.</li> <li>- Mainstreaming an official sustainability dimension in the TFA.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>
<b>Expanding the UNFSS family</b>	<ul style="list-style-type: none"> <li>- High level of engagement and coordination of various UN agencies.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>	<ul style="list-style-type: none"> <li>- Building on the body of knowledge and the network of the UNFSS.</li> <li>- Increasing openness and dialogue.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>
<b>Adding “Principle 11” to the UNGC</b>	<ul style="list-style-type: none"> <li>- High level of private sector engagement.</li> </ul>	<ul style="list-style-type: none"> <li>- Implementation on a voluntary basis subject to structural limitations.</li> </ul>	<ul style="list-style-type: none"> <li>- Building on the success of the UNGC.</li> </ul>	<ul style="list-style-type: none"> <li>- If implemented in isolation, issues of monitoring and enforcement might remain unsolved.</li> <li>- Might overlap with other meta-governance schemes.</li> </ul>
<i>Options that entail global agreement on a set of meta-guidelines</i>				
<b>Using a model for international regulatory cooperation</b>	<ul style="list-style-type: none"> <li>- Flexible and ready-to-use framework to both agree on meta-principles and administer their implementation at the UN-wide level.</li> </ul>	<ul style="list-style-type: none"> <li>- Potentially high transaction costs.</li> </ul>	<ul style="list-style-type: none"> <li>- Using an existing institutional framework at the UN-wide level.</li> <li>- Creating a flexible mechanism to bring together the existing meta-governance tools through the “reference to standards” clause.</li> </ul>	<ul style="list-style-type: none"> <li>- None identified.</li> </ul>

## 6. RECOMMENDATIONS FOR FUTURE WORK

The following notes draw from the analysis undertaken throughout this paper, and are formulated with a view to supporting future work and further research on private standards.

- **Use a broad definition for “sustainability” standards:** the world of standards is complex and continuously expanding. Likewise, sustainable development-related discussions are becoming broader and ever more intertwined. As a consequence, virtually all standards may have some form of sustainable development impact, and future analyses would benefit from the adoption of integrated approaches that embrace both standards that are openly aimed at pursuing sustainable development objectives, as well as standards that may have direct or indirect, positive or negative, sustainable development *impacts*. For this reason, the analysis of private standards appears to be clearer when private standards-specific issues are framed within broader standardisation issues.
- **Clarify what “private standard” means:** there appears to be some confusion in the literature about the term “private standard.” It is admittedly hard to come up with a static definition for the term; however, future studies on private standards would benefit from an upfront clarification of what is meant by the term “private standard,” at least for the purposes of the analysis.
- **Analyse the drivers of private sustainability standards on a case-by-case basis:** private standards appear to result from the combination of highly diverse factors, including consumer demand, CSOs lobbying and awareness-raising activities, as well as product differentiation or market penetration strategies of commercial GVC players. Thus an analysis of what drives them would seem to require a case-by-case approach.
- **Conduct disentangled research on the specific trade effects of private standards:** the WTO experience of discussing private standards, as well as other analytical work conducted over the years, shows that the trade effects of private standards are sometimes mixed with more general trade-inhibiting or trade-creating factors. As far as possible, future quantitative or qualitative assessments of the trade impacts of private standards may be more relevant if they focus exclusively on private standards-specific factors affecting trade.
- **Keep on collecting and disseminating success stories on private standards:** to allow standard schemes to learn from each other, but also to correct for information asymmetries and possible misconceptions, it would be desirable to keep on sharing success stories about private standards implementation, as well as factors of success in private standards design and operation.
- **Undertake a mapping exercise of bilateral or small-club FTA provisions relating to private governance of sustainability issues:** bilateral or small-club FTA practice evolves rapidly, and it would be useful to outline the evolution of private standard-related norms in such FTAs. This might also support and inform future multilateral work on the same subject.
- **Undertake a mapping exercise of national legal frameworks constraining private sustainability governance:** it would be useful to analyse the way in which different national legal frameworks address potential private standard failures. Work of a similar nature is emerging with respect to the regulation of the use and attribution of geographical indications in developing countries, for instance (see e.g. Marie-Vivien and Biénabe 2017). A similar exercise with regard to national regulations

applying to private standard schemes could be helpful to inform future multilateral work on private standards.

- **Involve private international law experts in future work on the limits of private governance:** private standard requirements have a bearing on the international sale of

goods, or the international provision of services. As private standards belong to the realm of private commercial transactions, it would be desirable to involve private international law experts in discussions pertaining to the potential boundaries that may or may not be applied to international commercial transactions.



## REFERENCES

- Abbott, K.W., and D. Snidal. 2009. "Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit." *Vanderbilt Journal of Transnational Law* 42: 501-577.
- Arcuri, A. 2013. "The TBT Agreement and Private Standards." In *Research Handbook on the WTO and Technical Barriers to Trade*, edited by T. Epps and M.J. Trebilcock, Chapter 14. Cheltenham: Edward Elgar Publishing.
- Ayral, S. 2016. *TBT and Trade Facilitation Agreements: Leveraging Linkages to Reduce Trade Costs*. WTO Working Paper ERSD-2016-02. Geneva: WTO.
- Bellmann, C. 2016. *Trade and Investment Frameworks in Extractive Industries: Challenges and Options*. E15 Expert Group on Trade and Investment in Extractive Industries - Policy Options Paper: E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.
- Brandi, C.A. 2017. "Sustainability Standards and Sustainable Development - Synergies and Trade-Offs of Transnational Governance." *Sustainable Development* 25: 25-34.
- Bremer, E.S. 2016. "American and European Perspectives on Private Standards in Public Law." *Tulane Law Review* 91: 325-369.
- Correia de Brito, A., C. Kauffmann, and J. Pelkmans. 2016. *The Contribution of Mutual Recognition to International Regulatory Co-Operation*. OECD Regulatory Policy Working Papers, No. 2. Paris: OECD Publishing.
- Corvaglia, M. 2016. "Public Procurement and Private Standards: Ensuring Sustainability Under the WTO Agreement on Government Procurement." *Journal of International Economic Law* 19(3): 607-627.
- Disdier, A.-C., L. Fontagné, and O. Cadot. 2015. "North-South Standards Harmonization and International Trade." *World Bank Economic Review* 29(2): 327-352.
- Food and Agriculture Organization of the United Nations (FAO). 2014. *Impact Of International Voluntary Standards on Smallholder Market Participation in Developing Countries - A review of the literature*. Rome: FAO.
- Fransen, Luc. 2015. "The politics of meta-governance in transnational private sustainability governance." *Policy Sciences* 48(3): 293-317.
- Gazzola, P., G. Colombo, R. Pezzetti, and L. Nicolescu. 2017. "Consumer Empowerment in the Digital Economy: Availing Sustainable Purchasing Decisions." *Sustainability* 9(5): 693.
- Grindley, P., E. Sherry, and D. Teece. 2017. *Standards of Today: Innovation and Interoperability*. Tusher Center for the Management of Intellectual Capital - Working Paper Series, No. 19. Berkeley: University of California.
- Institute of Social Science (IIS), University of Tokyo. 2017. *Private Standards and Global Governance: Prospects and Challenges*. ISS Research Series No. 62, Record of the 76<sup>th</sup> GSDM Platform Seminar held at Ishibashi Memorial Hall, Graduate School of Interdisciplinary Information Studies, University of Tokyo, 12 December 2016, edited by J. Nakagawa. Tokyo: IIS.
- International Institute for Sustainable Development (IISD). 2016. *State of Sustainability Initiatives Review: Standards and the Blue Economy*. Winnipeg: IISD.

- International Trade Centre (ITC) and European University Institute (EUI). 2016. *Social and Environmental Standards: Contributing to More Sustainable Value Chains*. Geneva: ITC.
- King, A., and M. Lenox. 2000. "Industry Self-Regulation Without Sanctions: The Chemical Industry's Responsible Care Program." *Academy of Management Journal* 43(4), 698-716.
- Marie-Vivien, D., and E. Biénabe. 2017. "The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review." *World Development* in press - available online.
- Marx, A. 2017. "The Public-Private Distinction in Global Governance: How Relevant is it in the Case of Voluntary Sustainability Standards?" *The Chinese Journal of Global Governance* 3(1): 1-26.
- Mavroidis, P.C., and R. Wolfe. 2016. *Private Standards and the WTO: Reclusive No More*. RSCAS Working Paper 2016/17. Fiesole: EUI.
- Murphy, S.D. 2005. "Taking Multinational Corporate Codes of Conduct to the Next Level", *Columbia Journal of Transnational Law* 43(2): 389-433.
- North-South Institute (NSI). 2012. *Models for Trade Related Private Sector Partnerships for Development*. Ottawa: The Canadian North-South Institute.
- Robach, M. 2010. "A Private Sector Perspective on Private Standards." Paper presented at the OIE Conference, Paper No. Conf. OIE 2010, 1-6.
- Schachter, O. 1997. "The Decline of the Nation-State and its Implications for International Law." *Columbia Journal of Transnational Law*, Vol. 36(1): 7-23.
- Schuster, M., and M. Maertens. 2013. "Do Private Standards Create Exclusive Supply Chains? New Evidence from the Peruvian Asparagus Export Sector." *Food Policy* 43: 291-305.
- Schwenzer, I. 2012. "Conformity of the Goods - Physical Features on the Wane?" In *State of Play: the 3rd Annual MAA Schlechtriem CISG Conference, 14 April 2011, Vienna, conference in honour of Peter Schlechtriem 1933-2007*. Edited by I. Schwenzer, L Spagnolo, and P. Schlechtriem, 103-112. The Hague: Eleven International Publishing.
- Standards and Trade Development Facility (STDF). 2013. 4<sup>th</sup> Global Review of Aid for Trade. *Side Event on Public Private Partnership in a Value Chain Context: Report of the Meeting*. Geneva: WTO.
- Standards and Trade Development Facility (STDF) and Enhanced Integrated Framework (EIF). 2016. *Enhancing SPS Capacity to Promote Trade for Development in Least Developed Countries: A Review of Diagnostic Trade Integration Studies*. Geneva: WTO.
- Tai, S. 2017. "Private Environmental Governance and the Trans-Pacific Partnership." *The Georgetown Environmental Law Review* 29(1): 111-130.
- Thorstensen, V., R. Weissinger, and X. Sun. 2015. *Private Standards – Implications for Trade, Development, and Governance*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.
- United Nations Economic Commission for Europe (UNECE). 2009. *A Common Regulatory Language for Trade Development*. Publication ECE/TRADE/375. New York and Geneva: United Nations.

- United Nations Forum on Sustainability Standards (UNFSS). 2013. *Voluntary Sustainability Standards: Today's Landscape of Issues and Initiatives to Achieve Public Policy Objectives*. Geneva: United Nations.
- United Nations Forum on Sustainability Standards (UNFSS). 2016. *Meeting Sustainability Goals. Voluntary Sustainability Standards and the Role of Government. 2<sup>nd</sup> Flagship Report: VSS and the Role of the Government*. Geneva: United Nations.
- Vermeulen, W.J.V. 2013. "Self-Governance for Sustainable Global Supply Chains: Can it Deliver the Impacts Needed?" *Business Strategy and the Environment* 24: 73-85.
- Vermeulen, W.J.V., and S. Seuring. 2009. "Sustainability Through the Market - the Impacts of Sustainable Supply Chain Management: Introduction." *Sustainable Development* 17: 269-273.
- Vermeulen, W.J.V., Y.Uitenboogaart, L.D.L. Pesqueira, J. Metselaar, and M.T.J. Kok. 2010. *Roles of Governments in Multi-Actor Sustainable Supply Chain Governance Systems and Effectiveness of their Interventions: an Exploratory Study*. The Hague/ Bilthoven: Netherlands Environmental Assessment Agency (PBL).
- Wijkstrom, E., and D. McDaniels. 2013. *International Standards and the WTO TBT Agreement: Improving Governance for Regulatory Alignment*. WTO Staff Working Paper ERSD-2013-06. Geneva: WTO.

### WTO Agreements

- Agreement on Government Procurement*, 1869 U.N.T.S. 508 (Text available at 1915 U.N.T.S. 103), 1994.
- Agreement on Technical Barriers to Trade*, 1868 U.N.T.S. 120, 1994.
- Agreement on the Application of Sanitary and Phytosanitary Measures*, 1867 U.N.T.S. 493, 1994.
- Trade Facilitation Agreement, Protocol Amending the Marrakesh Agreement Establishing the WTO, General Council Decision of 27 November 2017*, WTO Document WT/L/940, 28 November 2014.
- Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2*, 1869 U.N.T.S. 401, 33 I.L.M. 1226, 1994.

### Documents

- ASTM International. 2017. *Regulations Governing ASTM Technical Committees*. West Conshohocken, PA: ASTM International.
- GS1. 2007. *GS1 Global Traceability Standard - GS1 Standards Document*, Issue 1, Sept. 2007.
- International Organization for Standardization (ISO). 2000. ISO 9001:2000, *Quality Management Systems - Requirements*.
- International Organization for Standardization (ISO). 2004. Code of Ethics.
- International Organization for Standardization (ISO). 2015. Policy on communication about technical work to external parties.

- International Organization for Standardization / International Electrotechnical Commission (ISO/IEC). 1996. *Guide 2: Standardization and related activities -- General vocabulary*.
- International Organization for Standardization / International Electrotechnical Commission (ISO/IEC). 2001. *Directives, Part 2: Principles and rules for the structure and drafting of ISO and IEC documents*.
- International Organization for Standardization / International Electrotechnical Commission (ISO/IEC). 2016. *Directives, Part 1. Consolidated ISO Supplement: Procedures specific to ISO (Seventh Edition)*.
- International Organization for Standardization (ISO) and International Accreditation Forum (IAF). 2016. *ISO 9001 Auditing Practices Group Guidance on: Added Value Audit versus Consultancy*.
- ISO/IEC/ITU common patent policy (2007).
- Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (Text with EEA relevance), OJ L 286, 31.10.2009, 36-39.
- Think20 Dialogue. 2017. "Fostering the Sustainability of Global Value Chains (GVCs)." *G20 Insights*, 28 March 2017.
- United Nations (UN). 2015. *Transforming Our World: the 2030 Agenda for Sustainable Development*. Resolution of the UN General Assembly A/RES/70/1, 25 September 2015.
- United Nations Economic Commission for Europe (UNECE). 2015. *International Model for Transnational Regulatory Cooperation Based on Good Regulatory Practice*. Recommendation L, Rev. 2015.
- World Wildlife Fund (WWF). 2012. *Principles to Actively Endorse and Recognize Effective and Credible Standards and Certification Schemes*.
- WTO Committee on Government Procurement. 2012. *Adoption of the Results of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement, following their verification and review, as required by the Ministerial Decision of 15 December 2011 (GPA/112), Paragraph 5*, WTO Document GPA/113, 2 April 2012.
- WTO Committee on Government Procurement. 2017. *Key Take-Aways from the Committee's Symposium on Sustainable Procurement - Held in the Centre William Rappard (WTO headquarters), Geneva, Room W, 22 February 2017, Report by the Secretariat*, WTO Document GPA/W/341, 30 May 2017.
- WTO Committee on Sanitary and Phytosanitary Measures. 2005. *Summary of the Meeting Held on 29-30 June 2005 - Note by the Secretariat - Revision*, WTO Document G/SPS/R/37/Rev.1, 18 August 2005.
- WTO Committee on Sanitary and Phytosanitary Measures. 2007. *Private Voluntary Standards within the WTO Multilateral Framework - Submission by the United Kingdom*, WTO Document G/SPS/GEN/802, 09 October 2007.
- WTO Committee on Sanitary and Phytosanitary Measures. 2008. *Private Standards - Identifying Practical Actions for the SPS Committee - Summary of Responses - Note by the Secretariat*, WTO Document G/SPS/ W/230, 25 September 2008.
- WTO Committee on Sanitary and Phytosanitary Measures. 2009. *Effects of SPS-Related Private Standards - Descriptive Report - Note by the Secretariat*, WTO Document G/SPS/GEN/932, 15 June 2009.

WTO Committee on Sanitary and Phytosanitary Measures. 2011. *Actions regarding SPS-related private standards - Decision of the Committee*, WTO Document G/SPS/55, 06 April 2011.

WTO Committee on Sanitary and Phytosanitary Measures. 2015. *Report of the Co-stewards of the Private Standards e-Working Group to the March 2015 Meeting of the SPS Committee on Action 1*, WTO Document G/SPS/W/283, 17 March 2015.

WTO Committee on Technical Barriers to Trade. 2000. *Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade - Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*. WTO Document G/TBT/9, Annex 4, 13 November 2000.

WTO Committee on Technical Barriers to Trade. 2016. *Minutes of the meeting of 15-16 June 2016*, WTO Document G/TBT/M/69, 22 September 2016.

WTO General Council. 2006. *Transparency Mechanism for Regional Trade Agreements - Decision of 14 December 2006*, WTO Document WT/L/671, 18 December 2006.

WTO General Council. 2009. *28-29 July 2009 - Strengthening the WTO - Communication from India*, WTO Document WT/GC/W/605, 03 July 2009.

#### Case law

GATT Panel Report. Japan - *Trade in Semi-Conductors*, L/6309, adopted 4 May 1988, BISD 35S/116.

Guatemala. *Anti-Dumping Investigation Regarding Portland Cement from Mexico - AB-1998-6* - Report of the Appellate Body, WTO Document WT/DS60/AB/R, 02 November 1998.

United States. *Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products - AB-2012-2* - Report of the Appellate Body, WTO Document WT/DS381/AB/R, 16 May 2012.







Other recent publications from ICTSD's Programme on Inclusive Economic Transformation include:

- How Regulation and Standards Can Support Social and Environmental Dynamics in Global Value Chains  
Raphael Kaplinski and Mike Morris, 2017
- The Role of Aid for Trade in Building the Capacity of Developing Country Firms to Meet Sustainability Standards  
Jim Redden, 2017
- Advancing Sustainable Development Through Services Regulation  
ICTSD, 2017
- Realising the Potential of Services SMEs in Developing Economies  
Sonja Grater, Ali Parry, and Wilma Viviers, 2017
- Global Value Chains and Trade Facilitation: Opportunities for Sustainable Development  
Ben Shepherd, 2016
- The Gender Dimensions of Global Value Chains  
Penny Bamber and Cornelia Staritz, 2016

#### **About ICTSD**

The International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank, engaged in the provision of information, research and analysis, and policy and multistakeholder dialogue, as a not-for-profit organisation based in Geneva, Switzerland. Established in 1996, ICTSD's mission is to ensure that trade and investment policy and frameworks advance sustainable development in the global economy.