I. INTRODUCTION

Among the more intriguing developments in international agricultural and food trade over the past decade has been the rapid growth in the number and scope of private standards. These standards have arisen as a result of developments in the markets for and the marketing of foods, as described below. But they have also been a response to the evolution of public standards, notably those regulating health and safety. This apparent overlap between the public and the private sector standards adds both to the complexity of the issue and to the amount of interest shown in the subject by students of trade law and economics.

Along with the proliferation of the standards themselves has been a minor boom in the literature on the subject. However, empirical studies that enable one to generalize on the impacts of standards on trade are still relatively rare. As with most issues related to qualitative regulations, finding a basis for the measurement of market impacts is challenging. This chapter will therefore focus on the issue of the impact of private standards on the governance of the international food system rather than attempts to assess the quantitative effects on particular stakeholders.

II. WHAT ARE PRIVATE STANDARDS?

Standards for products sold on domestic or international markets provide information. Depending on the reliability of the information and conformity with the standard, buyers are given an assurance that the product meets certain requirements and possesses certain attributes. This information is of value to the buyer, particularly in cases where there is no previous history on which to base a judgment. But providing that assurance is also useful to the seller who might otherwise have to find alternative ways to reassure the buyer. And standards can be used for product differentiation, useful in monopolistic industries and with the potential to develop specialized market segments.
Food standards are one particular type of standard, notable for the dominance of issues related to health and safety and those concerned with the method of production and its impact on the environment. Public standards in agricultural and food trade have tended to focus on health and safety issues, as there is a near universal obligation by public authorities to prevent where possible the importation of substances that present a risk for human, animal and plant health. To be effective, such health and safety standards need to be mandatory. One might assume, therefore, that private standards deal with attributes other than health and safety, such as the method of production and the environmental impact. These are more subjective qualities that can be appreciated by consumers but are usually deemed to lie outside the scope of government regulations. Such standards would by their nature be voluntary, and their use would be part of a marketing decision by the firms concerned. In this case one could make a clear distinction between mandatory public standards and voluntary private standards. The marketplace would determine what attributes were desired and how the consumer was to be signalled. The government would make sure that all such products were safe.

Whilst it is useful to keep in mind this simple paradigm of the relationship between public and private standards the most interesting issues arise when it breaks down. Private standards are often related to health and safety issues over and above those established by public authorities. Private standards can even be mandatory if the public agencies choose to adopt such standards de facto by requiring compliance for (say) imports. Public authorities may also rely on the private sector for monitoring compliance with public standards, thus giving the appearance of more private sector responsibility in standard setting. Public standards can likewise relate to other attributes where risk is not involved, and can even be voluntary on occasions where no public threat is involved. Moreover, the public and private sector will sometimes cooperate in the setting and the administration of standards, thereby adding more ambiguity to the public/private dichotomy.

This apparent overlap has raised the issue of the definition of private standards from a semantic to a substantive matter. Not least among these questions is the nature of the rules that are supposed to guide the use of standards in international trade. Standards introduced to assure health and safety are governed by the provisions of the Agreement on the application of Sanitary and Phytosanitary Measures (the SPS Agreement), while the standards that are not put in place for such purposes are covered in the broader Technical Barriers to Trade
Agreement (the TBT Agreement). Private standards are not primarily addressed in the SPS Agreement, as this focuses on the obligations that governments undertake to ensure there is no avoidable harm to the trade system. Private standards are more naturally at home in the TBT Agreement, which covers all other such potential trade impediments from labelling to quality specifications whether these are of a public or private nature. As the obligations differ significantly between the SPS and TBT Agreements, defining the appropriate set of WTO rules to be applied to any particular standards is important.

In the literature, the distinction between public and private standards has been handled in various ways. Henson and Humphries (2010), in a useful discussion of this topic, point out that making this distinction is rendered more difficult by the various aspects of the standards themselves: the process of standard setting; the adoption of that standard by an entity; the implementation of the standard and the assessment of conformity to that standard. Both the public and the private sector can undertake these functions. There are examples of ‘pure’ private food standards, where no government entity is involved. These would include those which had been established by private actors in the market, adopted voluntarily, implemented without government intervention, and assessed by private agencies. Single-firm arrangements for quality control would usually fall into this category. But there are many other schemes that constitute a mix of public and private actions, making the definition a matter of choice depending on the context. As the focus of this chapter is on private standards and the WTO, an inclusive definition of private standards will be used that includes any standards where there has been significant participation (other than lobbying) by private firms and bodies in the setting, adopting and implementation processes. The use of private certification firms to monitor compliance to mandatory public standards is mentioned only briefly.

III. WHY ARE PRIVATE STANDARDS PROLIFERATING?

Though there are examples of private food standards earlier in the last century, today’s current flurry of activity can be traced to the 1990s. There are probably over 500 private standards in operation at present (UNCTAD, 2007). A ‘perfect storm’ of events has left the food production and marketing landscape littered with a complex mix of
Public regulations and private standards. Such proliferation has been attributed to a convergence of events both in the marketplace and in the regulatory arena.

Perhaps the most basic of such events has been the rise in consumer concerns about the safety of the food they purchase. These have arisen in past decades and resulted in tighter government regulations. In the 1990s these concerns were aligned with a distrust among consumers (or bodies claiming to represent them) of the regulatory mechanism itself. The credibility of food safety agencies (particularly in Europe) had indeed been weakened by some unfortunate lapses and it became fashionable to suspect that the administration of public standards was driven by the needs of the industries concerned rather than by the consumers. This tapped into a parallel concern that corporate interests were beginning to dominate the food chain and promote the products of chemical agriculture at the expense of more healthy and tasty foods.

The rise of this consumer interest in food coincided with the concentration of the food retailing sector and its growing international reach, leading to a period of intense competition among a small number of large firms (Swinnen, 2007). Appealing to consumer concerns about food safety provided retailers with a golden opportunity to position themselves as guardians of the health of their customers, even though they were essentially operating under the umbrella of public food safety laws. By expanding the meaning of ‘safety’ from its traditional context of the avoidance of illness to include healthy dietary practices and particular production methods, it was not difficult to set up firm-level standards that promised the consumer more assurance than just knowing that the food that retailers sold had been approved by the government as safe.

This concentration of the retail sector contributed to the lengthening of supply chains. Large firms were able to take advantage of lower trade barriers to source foodstuffs from abroad, including from countries that had not been seen as traditional suppliers. Once again Europe took the lead in this development, with foodstuffs arriving daily from Africa and Latin America for sale in the supermarkets. Thus private standards that were aimed at providing assurance for business-to-business transactions became necessary and in turn accelerated the global reach of the food firms. And as supermarkets became established in developing countries the adoption of private standards allowed for improvements in the control of quality and reliability in the sourcing of foodstuffs.

As these trends were unfolding, public food safety agencies were being reorganized to take into account the new realities of consumer
activism. Attempts to build a wall between food standards and the special interests of the food producers and manufacturers resulted in the establishment of a new set of agencies with broader accountability. The tension between scientific and political considerations remained but the agencies themselves adopted at least a part of the agenda of the critics of the food safety system. However, these agencies had to live under new trade rules (from the SPS Agreement) that required stricter adherence to scientific evidence and the process of risk management. In this environment the rise of private standards, with their ambiguous relationship to science, helped the public agencies to deflect some of what would otherwise have been a much greater pressure to bend scientific risk assessment to address consumer concerns.

One further change in recent years has accelerated the development of private standards. The trend in several countries has been to extend the legal obligation for maintaining safety in the food chain to the private sector, and to add to that obligation the correct labelling of foods sold with quality attributes. In the UK the Food Safety Act defined offences applying to all stages of the food chain (including farmers) of ‘rendering food injurious to health (section 7 of the Act); selling, to the purchaser’s prejudice, food which is not of the nature or substance or quality demanded (section 14); and falsely or misleadingly describing or presenting food (section 15)’. The Food Safety Act is one example of national legislation coexisting with the General Food Law Regulation of the European Union, adopted in 2002, which requires the traceability of food products and ingredients and covers recalls. The reaction of private sector entities in the food sector in setting up standards was in part a way of ensuring compliance, in effect collectivizing the process of ‘due diligence’ in improving information from raw material and ingredient suppliers.

IV. TYPES OF PRIVATE STANDARDS

The standards themselves can be categorized along several lines. This section attempts a characterization of some examples of the more visible of the private standards that impinge on trade in food and agricultural products. Some private standards relate to the production of farm products (‘pre-farm gate’), others to the handling and processing of these products after they have entered the chain (‘post-farm gate’). Some of the latter apply to the retail firms while others may be more related to processing; some are limited to individual firms and some are collectively set and administered; some are specifically tied to
public standards while others can have more strict provisions; some are ‘business-to-business’ standards and as a consequence are generally invisible to the consumer, others are ‘business-to-consumer’ standards, usually with an identifying label and accompanying information through promotions. From a more analytical perspective, a further distinction can be made between those that are intended as risk management standards and those whose primary function is product differentiation (Henson and Humphries, 2010: 10). But in practice retailers have an incentive to confuse these two categories, as they would prefer that they are seen as providing information through the standards that both reduces the risk (of buying an inappropriate product) and distinguishes the product (from inferior substitutes sold by competitors).

One ubiquitous pre-farm gate standard of a collective nature is known as GlobalGAP (sometimes written as GlobalG.A.P.) that was developed from the EurepGAP standard adopted by several European firms in 1997. The GlobalGAP standard is a code of Good Agricultural Practice that covers a range of factors, including food safety, animal welfare, environmental impacts and worker health and safety. It was originally retailer-driven, but has now broadened to include other parts of the food industry. It remains in the realm of business-to-business standards and is not identified by a label at the consumer level. It also relies on independent certification bodies in several countries. GlobalGAP has clearly filled a need for the food sector and undoubtedly facilitated a growth in the use of imported foods in major markets. It has attracted the participation of such market players as Walmart and McDonald’s. The increase in exports of fruit and vegetables to the European market has demonstrated the usefulness of recognized standards in expanding trade to developing countries. But GlobalGAP has not been without its critics. Some cite the cost of meeting the standards as a block to the participation of small farmers in international trade. Others have noted an overlap with other private standards such as those relating to organic foods.

Following a somewhat different path but to the same end are a set of voluntary collective private standards that have their origins in the International Standards Organization (ISO). The ISO is a private sector standard-setting organization with participation from national standards institutes and private sector standards bodies from 157 countries. The ISO seeks to promote a ‘free and fair global trading system’ by ‘providing the management control underpinnings for quality, technical procedural, safety, management, and environmental process standards’ (Knudsen and Josling, 2009). In some respects it
effectively bridges the space between private and public agencies. Many key ISO standards are contained in ISO 9000, which has become an international reference for meeting generic quality management requirements in business-to-business dealings. Certification under ISO 9000 has thus become a common management tool for companies wishing to participate in international trade. In addition, ISO 22000 relates specifically to the management of food safety in the food industry and includes more detailed standards such as ISO 22005 which relates to the traceability of foodstuffs. The use of such standards can help in achieving increased uniformity in meeting the customer’s quality requirements, in meeting applicable regulatory requirements, in enhancing customer satisfaction, and in ensuring food safety. But the focus of such certification requirements on management systems rather than on the content of specific procedures makes them live more easily with public health and safety regulations.

In contrast to such collective schemes, several pre-farm gate standards are confined to single firms. One early example was the Nature’s Choice standard of Tesco PLC, a UK-based retailer. Introduced in 1991, it was developed to assure consumers of the quality of fresh produce sold in the retail store and to impose a code of good practice on growers. The standard covers input use, pollution prevention, wildlife conservation and the protection of worker health. Compliance is independently audited. There is even competition among suppliers to reach the Gold Standard of best practices. In the US market the largest retailer of natural and organic products, Whole Foods Market, has established its own individual sets of standards for fresh produce and for meats, with the latter including acceptable animal husbandry practices. In France the retailer Carrefour has established its own _Filière Qualité_ (Quality Chain) to provide assurance to consumers. Such firm-level schemes rarely cross the line between public and private functions when it comes to health and safety: they build on existing public standards rather than attempting to supplant them. But they are also willing to take credit for the existence of public standards even if they have no choice but to accept them.

Of a more ambiguous status are the collective standards that attempt to link quality with national or regional production characteristics. Two such schemes that have had some success include the Red Tractor Assured Food Standards in the UK and the _Label Rouge_ standards in France. The _Label Rouge_ standards for poultry have their origin in the 1960s as a reaction to the spread of intensive broiler production. _Label Rouge_ poultry have secured about one third of the French poultry market with high cost pasture based chicken
Private standards and trade

(Westgren, 1999). The cachet has spread to other foods where HACCP-based quality control combines with regional tradition. *Label Rouge* supply chains (*filières*) have been established in many regions in France and the concept has even been exported to other countries. One key feature of the *Label Rouge* has been the enthusiasm with which the French government has greeted this private venture. The public authorities are a major player in both advocating and protecting the label. The UK Red Tractor Assurance scheme is only ten years old but has struck a similar chord with UK consumers. Some $15 billion of retail sales in the nation’s largest supermarkets carry the Red Tractor logo. It has specifically promoted local food production and probably helped UK agriculture to claim a quality premium over imported products. Such discriminatory practices would not be possible with public sector standards.

Other examples of the spread of private standards include initiatives by the US Food Marketing Institute (FMI) and the British Retail Consortium (BRC). The FMI established a Safe Quality Food (SQF) Institute that introduced a certification programme and management system which covers both primary producers (SQF 1000) and processors (SQF 2000) (Knudsen and Josling, 2009). These standards have now been adopted by a number of firms in several countries. In keeping with its roots, the SQF focuses on the nature of the food and its quality rather than on its method of production. The BRC standard was established in 1998 by UK food retailers as a set of guidelines for food production, processing and handling. These standards are now being used in 100 countries and have been renamed Global Standards. Indeed certification by the BRC has been incorporated into several other private standards.

One German example of a retailer-based quality standard is the *Qualitätsicherung* (QS) certification system that started with meat quality certification in 2001 and expanded to include fruit and vegetables in 2004. German and French retail federations (joined later by the Italian federation) initiated a food certification scheme in 2003 (International Featured Standards or IFS) that attracted support from many of the largest retailers in Europe. Meanwhile a parallel activity aimed at reducing the number of audits required by food firms was started in 2000 and by 2007 had attracted several of the major retailers (including some of those associated with the IFS). Some rationalization of these various schemes appears to be under way to deal with the alphabet soup of standards bodies.
V. DO PRIVATE STANDARDS FACILITATE OR RESTRICT TRADE?

Risk management standards tend to be cost reducing and hence they encourage trade. Firms have more information about their supplies and can avoid costly errors. Consumers may also gain from the reduced asymmetry of information and be encouraged to buy more foreign products than otherwise would be the case. Product differentiation will also tend to generate trade, as countries will vary with regard to the cost of producing to different specifications. Whether that trade creation is the main effect will depend on the content of the standard. If the standard is truly global then there should be a positive impact on reliable suppliers who can meet the standards. But if the standards only apply to a sub-group of countries then there could be some ‘trade diversion’ away from suppliers who otherwise would be able to compete. This could happen in cases where the standards are developed within a free trade area or another such grouping. Thus, as with preferential tariff reductions, the net impact on trade will depend on the balance between the positive impact of cost reduction and the negative effect of diverting trade away from the most efficient supplier.

The notion that standards may be trade-creating is in interesting contrast to the lengthy literature on ‘non-tariff barriers’ which are taken to include health and safety regulations and other non-fiscal conditions for market access. Indeed early commentators on private standards did tend to approach them as non-tariff barriers. But the general argument that import regulations impede trade is based on the possibility of their being used as ‘hidden protection’ by favouring domestic suppliers. Too close a relationship between regulators and domestic industries can indeed give rise to such trade restrictions. But the development of private standards that have as their main aim the assurance that imported (and domestic) products meet some desirable criteria does not seem to fall under the heading of disguised trade barriers. In that they counter problems of asymmetric information the introduction of private standards could be one step in the direction of efficient markets, even if some ‘undesirable’ trade is excluded. In fact, to push the argument further along, one could make a case that such private standards are the more effective approach to open markets as they do not require complex negotiations on tariff levels. Private firms can sign up to join the supply chain and be granted immediate access rather than wait for governments to reduce tariff barriers. And, as noted above, trade expansion as a result of cost reductions is more
beneficial to the economy than the equivalent trade that results from the removal of tariffs.

The first-order effect of the increased trade is to benefit those exporters that can meet the private standards. The gain may come in the form of higher prices or more secure outlets. The issue of the excluded exporters is of course important from an economic as well as a political point of view. If private standards were disguised trade barriers then the excluded suppliers would all be foreign sources of the product. However, as informal trade liberalization the excluded suppliers would be those unable or unwilling to meet the standards. Two separate categories of such excluded suppliers need to be identified: those able to supply goods of the required quality if they were able to secure contracts would suffer most and their existence would reduce the potential benefit of the standards themselves. However, there will often be an excess of willing suppliers when lucrative markets open up and one assumes that the terms of any contracts would adjust rapidly so that no such excess supply is available. It would be in the interest of the buyer (acting as the chain ‘captain’) to restrict demand and make suppliers compete for contracts, but adequate competition in the retail market should limit this tendency. Excluded suppliers that could not meet the required standards are unequivocally hurt in the short run, though some may do well by keeping up their volume in less differentiated markets while others could revamp their production practices.

One would expect that those excluded suppliers unable to meet the importers’ private standards would tend to be in developing countries. Hence the international community may take steps to assist such suppliers. But unless the nature of the private standards themselves had some built-in bias it would seem harsh (and counterproductive) to blame the distributional impact of the standards for the unevenness of quality controls and productive capacity in developing countries. The reaction of countries has been to target assistance towards developing countries in order to help them meet the standards that are required for entry into developed country markets.

Even those producers that gain access to developed country markets may not be the only beneficiaries. How much of the benefits will accrue to the producer of these foods as opposed to the processing, distribution and marketing stages in the chain will depend on individual circumstances. Those producers that cannot meet the private standards will correspondingly lose, though they might be able to shift to supplying other, less demanding, markets. If the consumer has to pay a higher price for attributes that are expressed by the private
standards then their benefit will crucially depend on whether other options exist for those consumers who are unwilling to pay for those attributes. ‘Over-protection’ of consumers who may want nothing more than a safe and inexpensive product regardless of its method of production can be a real if hidden cost (Josling et al., 2004).

Less easy to pin down is the distribution of benefits from standards that allow for increased product differentiation. At a fundamental level, artificial product differentiation in the market for an homogeneous product will be to the advantage of the seller and the disadvantage of the consumer. But helpful product differentiation, based on actual differences in taste, is generally beneficial to consumers. Those who can buy the non-preferred product for a lower price will gain and those who have to pay a higher price for the preferred product can at least be assured that they are not unknowingly consuming an inferior product. However, if consumers rely on marketing information provided by the retailer to define the quality attributes and stimulate the demand for them then some of the benefits to the consumer may be illusory.

VI. DO PRIVATE STANDARDS CONFLICT WITH PUBLIC STANDARDS?

There would seem to be relatively few cases where conflicts have arisen between public and private standards. Private standards, when they address similar issues to public standards, are by their nature more stringent; there would be little point in developing a standard that is less restrictive than a public standard. They are also in essence voluntary, otherwise they would in effect merely replace the public standard. The voluntary nature of these standards reduces the scope for tensions with multilateral trade rules. Therefore conflicts will tend to occur in areas where public standards do not exist but where market participants consider that a standard is needed to assure health and safety for consumers. If the private sector steps in to develop a standard in these cases, the nature of the private standard can indeed be potentially controversial.

One area that has particular potential for a divergence between public and private standards is in the marketing and labelling of organic foods. Private standards were a reaction to the rapid growth, at least until the 2008–9 recession, in the demand for organic produce. Private retailers rushed to expand their organic food offerings as it
became clear that some consumers were prepared to pay substantial premia for organic produce, ranging from strawberries and milk to bread and dog food. Indeed the favourable market reaction to foods that had been raised without synthetic chemicals encouraged producers to add biodiversity and animal welfare attributes under the heading of ‘organic’ in order to pick up on a wider range of concerns that were being expressed through purchase decisions. In particular, the regulations for organic certification usually included the prohibition of the use of Genetically Modified Organisms – though one could make a case that genetically manipulating a plant to produce its own insecticide was a boon to organic farming.

Government involvement in the development of standards for organic foods was a response to the proliferation of private standards. The first regulations relating to organic foods were formulated to give credibility and cohesion to the growing number of standards being introduced by private organizations and retail outlets. The Soil Association in the UK, for example, which dates back to 1946, became one of the earliest organic certification bodies to be approved by the UK government. The first European Union regulations on organic production appeared in 1991 (Regulation 2092/91) (Josling, 2009; Tilman, 2009). This regulation defined a framework for organic food marketing, including the labelling, processing, inspection, and trading of such products. In 1999 the scope of the legislation was extended to include livestock products. This new legislation firmed up the legal framework for organic production and made mandatory (from July 2010) use of the EU organic logo. The enthusiasm with which the EU Commission has taken up the question of organic food certification matches its support for the spread of such farming practices within the EU.

Though support for organic farming by government agencies in the US has lagged behind that in Europe, the establishment of federal standards for organic foods dates back to the 1990 US Organic Foods Production Act (Josling et al., 2004: 172). The National Standards on Organic Agricultural Production and Handling were introduced in 2000. Other countries followed a similar path, defining national standards or, in several cases, adopting standards that were consistent with those in use in major markets. Thus trade-facilitating developments such as mutual recognition and equivalence have allowed the trade in organic produce to grow. So far governments have been able to avoid the pitfalls of linking organic production with human health. This would undoubtedly antagonize producers of conventional produce and lead to serious trade conflicts. Leaving the...
private sector to play on the ambiguity of consumer perceptions on this issue has thus far proved to be a winning strategy.

The questions surrounding the standards established for organic foods have their counterparts in other areas. One such standard enjoyed a burst of popularity in the UK in the 1990s. The concept of ‘food miles’ was promoted as a way of making consumers aware of the increased distances over which food often travels as a part of extended supply chains. Though it never reached the status of a widely adopted private standard it has led to some labels indicating, for instance, whether the food has been air-freighted. Food miles came under criticism from distant suppliers, such as New Zealand, who believed that their own efficiency and low carbon use made up for the extra energy needed for transportation. Pressures for similar types of sustainability certification are also gaining ground, for example, with respect to forest products, fish and biofuels. The import of such products may not be prohibited, but eventually the network of standards both public and private linked to sustainability could effectively result in the same outcome.

VII. DO PRIVATE STANDARDS POSE PROBLEMS FOR THE WTO?

The extent to which private standards are covered by the SPS Agreement is still a matter of some discussion among governments. Though the Agreement mainly applies to measures put in place by governments there is a reference to non-governmental entities in Article 13, which (in part) states that: ‘Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories ... comply with the relevant provisions of this Agreement’ (WTO, 1995). This would appear to imply that private sector entities have an obligation to comply and that governments should monitor this compliance. But this implication is not entirely convincing. First, there is no place in the Agreement where the obligations of non-governmental entities are spelt out and as a result the ‘relevant provisions’ are not specified. One can speculate as to how much of the Agreement might be relevant to the private bodies (such as by ruling out those that require governmental action), but the fact that it is not made clear would always render such speculation groundless. Second, the obligation on governments to take reasonable measures when available to them
represents the weakest form of ‘best endeavours’ commitment. It is not clear what would constitute a reasonable measure to ensure compliance when the obligation on the private sector is itself imprecise. And to make even that commitment subject to the availability of appropriate measures (rather than obliging governments to set up such monitoring) compounds the problem. It is difficult to see how that part of Article 13 would be interpreted by a panel if the challenge was that a government had failed to enforce the provisions of the SPS Agreement on a private sector standard-setting body.

Somewhat more precise is the final sentence of Article 13, which states that: ‘Members shall ensure that they rely only on the services of non-governmental entities for implementing sanitary and phytosanitary measures only if these entities comply with the provisions of this Agreement’ (WTO, 1995). This sentence has a much more direct application. Governments cannot evade their own responsibilities by handing the implementation (including accreditation) of their health and safety regulations to private bodies. All the provisions of the Agreement would seem to apply to those private sector entities that are entrusted with the task of implementation. So far the question of the use of private firms for certification related to public standards has not posed any significant trade problems.

So in what connection has this issue been raised? The SPS Committee has been discussing the question of private standards for some time. In 2005 there was a request by the government of St Vincent and the Grenadines to consider the implication of standards relating to banana imports in the EU on small farmers in that country (G/SPS/GEN/766). The claim was that the restrictions on pesticide use under a private standard (EurepGAP) adopted by the importers were more stringent than those under EU import rules. The EU indicated not only that EurepGAP standards were voluntary and not required by EU legislation, but also that the higher private standards were not inconsistent with EU rules. As the importers concerned accounted for a large share of the exports from St Vincent, they de facto constituted mandatory standards. By imposing high costs on their producers the private sector standards were in effect limiting the participation of small farmers in profitable trade: ‘Thus the choice of whether or not to comply with a voluntary standard becomes a choice between compliance or exit from the market. In this way, the distinction between private voluntary standards and mandatory ‘official’ or ‘public’ requirements can blur’ (Wolff and Scannell, 2008).

By 2007 the question of private standards had been elevated to a separate agenda item and in turn has been discussed extensively at SPS
Committee meetings. Information sessions were held to discuss the problem and suggest strategies that could be used by developing countries (G/SPS/GEN/746). Concerns focused on the linked issues of the extent to which private standards constituted a barrier to market access; the burden of the costs of meeting these standards on developing countries; and the extent to which WTO agreements covered such private standards. Despite the fact that meeting private standards undoubtedly adds to the costs of developing country exporters, it is not clear whether the WTO can do much through the SPS Committee to alleviate such burdens. Other multilateral bodies, namely those with the funds available to strengthen the capacity to meet developed country standards, have begun to take up this issue.

But the question of whether private standards are subject to some of the disciplines of the SPS Agreement is still a matter for resolution.11 So what about the TBT Agreement? Article 3 of the Agreement specifically covers the ‘preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies’. The provisions of this article match those in the SPS Agreement: Members ‘shall take such reasonable measures as may be available to them to ensure compliance with the same provisions as apply to central governmental bodies’, except that of notification. Moreover, central government bodies shall not ‘require or encourage non-governmental bodies to act in a way inconsistent’ with TBT obligations, and they should ‘formulate and implement positive measures and mechanisms in support of the observance of the provisions’ by non-governmental bodies. A similar obligation is imposed on governments with respect to non-governmental conformity assessment entities. The implication of these obligations on Members is that discrimination and other practices that are not allowed by government entities should not be adopted by the private sector while public authorities look the other way.

The TBT Agreement also sets out a Code of Good Practice (Annex 3) for non-governmental or industry bodies to prepare, adopt and apply voluntary or private standards. The Code is extensive and includes fundamental provisions for non-discrimination and avoiding standards that impede trade unnecessarily. Over 250 standard-setting bodies apply this code. On paper it would seem to address many of the concerns of developing countries. But Häberli (2008), in a study of market access into the EU and Switzerland of products from developing countries, concludes that ‘in practice, however, there is little evidence of such private standard-setters actually having considered the concerns of exporting countries and operators, especially in
developing countries. On the contrary, in quite a few cases developing country operators have to meet requirements which exceed production standards in [the developed] country’.

Private standards are also potentially subject to the provisions of the Agreement on Pre-shipment Inspection (API). The API addresses the practice of inspecting traded goods in the territory of the exporter before those goods are shipped to the importer. Such inspection has often been introduced to make it easier to import from developing countries. But the problems relating to discrimination, unnecessary delays and other cost-raising practices led to the adoption in the Uruguay Round of new rules to facilitate such arrangements. A ‘pre-shipment entity’ in the context of the API is one that is ‘contracted or mandated by a Member to carry out pre-shipment inspection activities’ (Article 1:4 of the API), so if a private firm arranges for the pre-shipment inspection the constraints in the API (non-discrimination, etc.) will not apply. However, developing countries may on some occasions become involved in such practices as a way of building up exports. In that case the API could become relevant to the standards.

Occupying a position somewhere between a private sector organization and a public body is the International Standards Organization. In the case of ISO standards there has been a more conscious attempt to avoid conflicts with the WTO bodies. Such standards are designed ‘to be consistent with and to facilitate compliance with multilateral rules in the Agreement on the Application of Sanitary and Phytosanitary Standards (SPS) and the Agreement on Technical Barriers to Trade (TBT) within the World Trade Organization (WTO)’. But in contrast to the multilateral standard-setting bodies mentioned in the SPS Agreement, the ISO has no special relationship with the WTO’s SPS provisions. However, with widespread acceptance of ISO quality management standards the ISO has become an important part of the global standards environment.

VIII. HOW MIGHT PRIVATE STANDARDS BE IMPROVED?

The proliferation of private standards in food and agricultural trade channels has not (yet) produced any major conflict either with multilateral trade rules or with public health and safety standards. Evidence that trade has been impeded is more anecdotal than
overwhelming. Some exporters have benefited while others have had to struggle to meet the strict requirements of retail-led supply chains. But there is an underlying inconsistency that is likely to emerge at some stage. Governments have committed themselves (in the SPS Agreement) to adopt regulations based on science and risk assessment in matters of animal, plant and human health. Quality standards are not so constrained (and hence are covered by the TBT Agreement). Private firms, in particular retailers, have no interest in maintaining this firewall between risk-management and quality attributes. They sell a bundle of attributes tailored to consumer demands and ambiguity on such matters as the health claims for organic produce is part of their strategy. Governments appear content to let such matters be handled by the private sector and so may be reluctant to step in to clarify matters.

This apparent stasis does not mean that the situation could not be improved. Several suggestions have been made that might defuse future conflicts. These fall under three heads: the clarification of the place of the private standards in the SPS agreement; the use of codes of best practice for private standard-setting bodies; and the simplification of the task facing producers to comply with multiple standards.

The need for a clarification of the extent to which private standards are covered by the SPS Agreement is widely acknowledged. Constructive ambiguity can help in reaching an agreement but this becomes an impediment when that agreement must be interpreted. The SPS Committee could develop guidelines on the implementation of Article 13. This would avoid the need to amend the text, which could lead to demands to introduce other amendments. The problem is that WTO members may find it difficult to agree on those guidelines. There is a divide between those that are unwilling to extend the reach of the SPS rules to health-related claims by private standard-setting bodies and those who see such an extension as desirable to avoid costly confusion. As a result the matter may have to be clarified by legal rather than political interpretation. A conflict that had resulted in a report from a dispute settlement panel would perhaps clarify the meaning of Article 13. So far no issue has arisen that has been commercially significant enough to spark a dispute.

There also appears to be room for improvement in the way in which private standards are set and in their relation to public standards (regardless of the import of Article 13). The TBT Agreement obliges non-governmental standard-setting bodies to adhere to a Code of Good Practice. It seems odd that these bodies are less constrained when they are considering standards in the area covered by the SPS
Agreement. Many of the private standards schemes already profess adherence to the TBT Code, as mentioned above, and so it would seem relatively uncontroversial to require this of all such standards in the food area. The Code deals with matters of non-discrimination, harmonization and the avoidance of unnecessary restrictions on trade, but it also obliges standards bodies to avoid an overlap with other standards. It may be somewhat easier for governments concerned about excessive costs in meeting standards to be able to address the bodies concerned in the context of an obligation to follow a code.

Some of this is already taking place for reasons not connected to international pressures. Those using private standards have an interest in avoiding costly duplication and confusion among suppliers. The process of ‘benchmarking’ is being adopted increasingly to relate different standards to some base or benchmark. In this way standards in use in different countries can be evaluated in terms of their relation to the base standard. This does not imply harmonization around one standard (though that could be the outcome in some instances) but it does facilitate mutual recognition. It also provides a possibility of tracking the progress over time of improvements in standards. And, for better or worse, it gives governments additional scope for requiring adherence to ‘voluntary’ private standards as an alternative to developing mandatory public standards.

Assuming that the use of private standards continues to increase, we may eventually see a time when these standards largely crowd out those that are promulgated by public bodies. Not that the government agencies will lose interest in health and safety but the private standards and the certifications that underpin them may take over many of the functions currently performed by the public sector. In this case one might expect to see more attempts by governments to extend at least some minimal discipline over private standards. To the extent that governments will retain ultimate responsibility in matters of health and safety it is not unreasonable to expect that private standards in that area will become more consistent with the obligations undertaken by governments. Progress in this direction will not come easily if the private sector considers that risk assessment and the use of scientific evidence are too difficult to sell to consumers. As a result this development may have to wait until consumers regain their trust in the scientific establishment and their role in government. Until then the tension remains between public food standards based on acceptable levels of risk consistent with the SPS Agreement and private standards aimed at reassuring consumers that good agricultural practices accompanied by traceability are their best way of regulating the food chain.
NOTES

1. Seminal contributions include Henson and Reardon (2005) and Fulponi (2006). These articles include references to the earlier literature on standards and trade and to the structural changes in the food industry that have been in part a cause of the proliferation of private standards.

2. One group of studies has shed light on the practical impact of standards for Africa and other developing regions (Jaffee and Henson, 2005; OECD, 2006a; Fulponi, 2007; Haberli, 2008; World Bank, 2005; Anders and Caswell, 2009; Swinnen and Maertens, 2007).

3. Overlaying these issues is that of the definition of ‘private’ in those cases where the government maintains a hand in the private sector activity. This question is not addressed here.

4. Public standards generally involve public sector participation in the setting of standards, by means of comments. To be a private standard under this definition, the private sector should have participated in the adoption and implementation as well as the setting of the standard.

5. Though many of these private standards focus on the production of agricultural crops and livestock products, similar ‘Good Practice’ standards are found at other levels of the supply chain. Examples include Good handling practices (GHP), Good processing practices (GPP) and Good management practices (GMP) (Knudsen and Josling, 2009).

6. The use of the word ‘red’ in both these schemes is puzzling, as it is usually taken as a warning: green tractors and labels might seem to provide more comfort to the consumer.

7. In addition, the *Label Rouge* is registered as a Protected Geographical Indication (PGI) under EU law.

8. Though the same can be said about public standards, at least there is a multilateral framework (the SPS Agreement) under which such standards are regulated. There is still a chance of an efficient supplier being excluded from a market because its government has not adopted the appropriate standard. But the mechanism exists for such trade diversion to be minimized, such as through the adoption of international standards or the negotiation of equivalence agreements.

9. It should be pointed out that the economic gains from ‘new’ trade as a result of cost reductions are greater than those associated with a tariff reduction that generates the equivalent volume of trade. A portion of the impact of the tariff cut is a transfer from government to consumer in the importing country. The reduction in transactions cost adds to consumer welfare but has no corresponding taxpayer loss.

10. Following an extraordinary response to the request for public comment, the USDA agreed to ban the use of GM ingredients and radiation in the production of organic foods.

11. A submission by the UK government on this question (G/SPS/GEN/802) addresses some of these legal issues.

BIBLIOGRAPHY

Private standards and trade


WEBSITES FOR INFORMATION ON SELECTED PRIVATE STANDARDS:

British Retail Consortium Global Standard: www.brc.org.uk/standards/about_food.htm
Carrefour Filière Qualité: www.carrefour.fr/etmoi/fqc/
EurepGAP: www.eurepgap.org
Global Food Safety Initiative: www.ciesnet.com/2-wwedo/2.2-programmes/2.2.food-safety.gfsi.asp
International Featured Standards: www.food-care.info
ISO 22000 (Food safety management systems) and ISO 22005 (Traceability in the feed and food chain): www.iso.org
Label Rouge: www.label-rouge.org
Qualitat und Sicherheit GmbH QS: www.q-s.info/index.php?l=92&L=1
Red Tractor Assured Food Standards: www.redtractor.org.uk
Safe Quality Food (SQF) 1000 and 2000: www.sqfi.com
Tesco Nature’s Choice: www.tescocorporate.com