

THE INTERPLAY OF PUBLIC AND PRIVATE STANDARDS

LITERATURE REVIEW SERIES ON THE IMPACTS OF PRIVATE STANDARDS – PART III



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Part three of a series of four papers, each comprising a literature review of the main information resources regarding a specific aspect of the impact of private standards – focuses on the literature related to harmonization of, and interdependencies between public and private standards, and the ways in which governments could engage with private standards to impact their legitimacy and significance in the market; provides examples of complementarities between public and private standards, and the harmonization efforts made in this area.

Descriptors: **Standards, Private Standards, Standardization, Certification, Bibliographies.**

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Abbreviations

BRC	British Retail Consortium
CAC	Codex Alimentarius Commission
CFPC	Certified Forest Products Council
CONAP	National Council for Protected Areas in Guatemala
EAOPS	East African Organic Products Standards
ETI	Ethical Trade Initiative
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLO	Fairtrade Labelling Organizations International
FSC	Forest Stewardship Council
GAP	Good Agricultural Practices
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GFSI	Global Food Safety Initiative
GSTC	Global Sustainable Tourism Council
GMP	Good manufacturing practices
GPP	Green Public Procurement
HACCP	Hazard analysis critical control point
IFOAM	International Federation of Organic Agriculture Movements
IFS	International Food Standard
IIED	International Institute for Environment and Development
IEC	International Electrotechnical Commission
ILO	International Labour Organization
IPPC	International Plant Protection Convention
ISO	International Organization for Standardization
ITC	International Trade Centre
ITF	International Task Force on Harmonization and Equivalence in Organic Agriculture
ITU	International Telecommunication Union
MAC	Marine Aquarium Council
MBR	Maya Biosphere Reserve
MSC	Marine Stewardship Council
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OIE	World Organisation for Animal Health
PDO	Protected Designation of Origin
PGI	Protected Geographical Indications
SAI	Social Accountability International
SAN	Sustainable Agriculture Network
SFI	Sustainable Forestry Initiative
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SSI	State of Sustainability Initiatives project of the Sustainable Commodities Initiative
SQF	Safe Quality Food
STDF	Standards and Trade Development Facility
TBT	Agreement on Technical Barriers to Trade

TSG	Traditional Specialty Guaranteed
TSPN	Trade Standards Practitioners Network
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
USDA	United States Department of Agriculture
WHO	World Health Organization
WTO	World Trade Organization

Executive summary

Research provides some good examples of: (i) how governments engage with private standards and use these in legislation; (ii) how public and private cooperation facilitates the development of a public standard which enhances global harmonization of good agricultural practices; (iii) how collaboration between institutions fosters harmonization of standards; and (iv) that private standards provide a baseline for compliance with public standards. Yet, the difficulty of companies in dealing with public and private standards evidences that these examples remain highlights and that initiatives have not yet been successful in reducing the number of standards with which firms need to comply.

Overall, there is a multitude of competing public and private standards that are rarely harmonized, and sometimes complement, but often duplicate each other. Many regulatory functions are performed by public and private actors creating a situation that is inefficient when it comes to achieving policy goals. Yet again, it is small producers that are hit most by the current situation of a 'dysfunctional interplay' of public and private standards. Urgent measures need to be taken to create more complementarities and harmonization among private standards and between private and public standards. This approach would address the root of the problem (multitude of standards) instead of trying to treat the symptoms (exporters' exclusion from international trade).

The question on how public and private standards interact constitutes relatively new research terrain and has received limited attention. This particularly applies to social and environmental standards where the majority of research focuses on the interplay of private and public forestry standards. Interdependencies between public and private food safety and quality standards have been more closely analyzed, though only in the past decade or so.

The main findings of this report include:

- The development of an efficient system of interacting public and private standards is more advanced for food safety and quality standards as opposed to social and environmental standards or other private standards with sustainability claims.
- In food safety and quality, public norms define the minimum requirements to be fulfilled and private standards establish the tools and processes to meet these requirements. It is particularly the HACCP¹ standard system that allows identifying potential food safety hazards during the food production and preparation process. In combination with product traceability systems this allows for the enforcement through inspection of production records rather than finished product inspection.
- This shift from regulating the product to regulating the production processes makes regular product inspection and firm plant visits redundant, which in turn reduces costs. Public authorities' controls changed from product inspection to control whether appropriate systems are in place and function correctly.
- One major source of content lies in the fact that many private food safety and quality standards exceed regulatory obligations as firms try to differentiate themselves from competitors and position their products in saturated markets. Due to high transaction costs for establishing their own standard in supply chains, firms started to establish coalitions (national and international) for the development of collective standards, such as the Global Food Safety Initiative (GFSI), Global GAP, or the British Retail Consortium (BRC).
- This has a number of advantages: firms can (i) potentially create competitive advantages; (ii) jointly pursue common interests on a non-competitive platform; and (iii) increase the number of potential suppliers from which to procure. This leads to more harmonized standards. The GFSI, for example, benchmarked and recognized 13 schemes as equivalent. These advantages would also

¹ HACCP is a food safety management system and stands for hazard analysis critical control point. HACCP addresses physical, chemical and biological hazards and is used in the food industry to identify potential food safety hazards.

apply to more coordinated approaches vis-à-vis social and environmental standards. Yet, the development of non-competitive platforms and coordinated approaches among standard setters for these standards is in very early stages. First steps of non-competitive collaboration are taken by the 4C Association in the coffee sector. Singular benchmarking efforts have also been carried out, mainly for coffee standards.

- Potential welfare gains to be realized from more harmonized standards are immense. Harmonization of public and private standards is also an important strategy in fighting potential barriers to trade. For example, harmonized *public* standards make trade more efficient as exporters could comply with globally accepted standards instead of complying with different standards for each target market or buyer. Studies show that agreed upon international standards increase trade and exports, both having positive welfare impacts.
- Often, private standards fill the gap where governments do not implement/enforce standards they committed to. Although this seems to be better than complying with no social or environmental standards, this cannot be a satisfactory status in the long term as it further weakens the role of governments, particularly in developing countries. The relation between the public domain and private standards should rather be a complementary as opposed to a substituting one.
- Legitimacy of private standards can depend on the course of action taken by government. Where governments decide to (i) support training activities for companies enabling compliance with a standard, (ii) disseminate knowledge about the use or value of private standards or (iii) encourage suppliers to get certified to a private standard by providing financial incentives and technical assistance, indirectly, certain legitimacy is conceded to the standards concerned.
- The interaction of private and public standards is determined, at least to a certain extent, by the legitimacy of the standards. If a private standard is not perceived as legitimate by policymakers, it will surely not be incorporated in public regulation. At the same time, public authorities may influence the perceived legitimacy of private standards in the public domain in many ways, through actions such as disseminating knowledge about the use or value of private standards, or incentivizing organizations to adhere to private standards. Thus, governments have a key role to play in shaping the interplay of public and private standards. Public standards will always play a key role in protecting the public good and correcting market failures. Public authorities also ensure that basic standards are consistent with WTO regulations, SPS and TBT agreements in particular, and with other supranational public standards.

The increasing number of private standards and the increasingly important role these standards play in ensuring food safety, food quality and social and environmental production conditions, inevitably leads to the discussion about the legitimacy of private standards and the question what makes a legitimate standard. This is particularly relevant when discussing overlaps in private and public standard setting and in cases where private standards substitute public standards and assume regulative functions.

Numerous different standards might discourage producers from exporting in the first place. The multitude of *private* standards creates inefficiencies in the standard system as a whole. Inefficiencies occur when market participants need to comply with several standards resulting in duplication of compliance costs. Prominent initiatives work towards the harmonization of private standards and their more efficient and effective implementation. Nevertheless, their actual impact towards efficiency and harmonization seems limited. Some of their important outputs include (i) the production of guidelines for developing consensus standards, and (ii) creating enhanced relationships, trust, and understanding among stakeholders, an important fundament for future convergence.

Harmonization is not only important among public and among private standards but also between public and private standards. Companies have to comply with both, public and private standards and the amount and stringency of both are steadily increasing. This, first, excludes many companies from participating in international trade and, secondly, it makes compliance to these standards a costly endeavor in terms of human, financial and technical resources.

1. About the literature review series

This paper on the interplay of private and public standards is part of a broader systematic literature review on the impacts of private standards. The review consists of a series of four papers in total, each paper focusing on one specific issue. The topics were selected according to their relevance to ITC's main constituents - producers, exporters, trade support organizations and policymakers in developing countries - and their prevalence in research.

The question on how standards impact trade is more relevant than ever. Against the background of a world economy that is global in scope and organization with economic activities being spread across national boundaries, the liberalization of trade has been one factor contributing to a policy shift from import substitution to export-led growth strategies. This has resulted in the involvement of a large number of producers in export activities and in global or regional value chains. Compliance with standards has become an important determinant of trade competitiveness. Given the importance of value chains and standards for producers in developing countries, we decided in a first part, to analyze the literature on private standards impacts in global value chains.

While only few standards include requirements that directly address the value chain, most private standards comprise requirements that pertain to social and environmental conditions on producer/farm or factory level. In most cases producers and/or factory workers are the primary target group, and standards aim to improve living and/or working conditions. Nevertheless, standards also impact producers' surrounding communities, or the wider environment. This is why in a second part we analyze the results obtained by studies looking into the impacts of private standards on producers, exporters and their environments.

The framework within which producers, exporters and buyers act is provided by public standards that pertain to, for example, product safety, food security, quality, or environmental protection. While harmonizing efforts between public and private standards are in their infancy, interdependencies between private standards and public standards are growing. Private standards are being aligned to public standards, while standard setting on a public level is being influenced by private standards. This interplay and the different ways for governments to engage with private standards also impact their legitimacy. Aiming to better understand these interdependencies and their implications for producers and policymakers, this third paper analyzes the literature relating to these issues and takes stock of where the harmonization of public and private standards stands.

Finally, a fourth paper takes a practitioners perspective and aims to understand under which circumstances the application of standards can be an effective tool to foster sustainable development. The underlying questions are: under which circumstances do standards have the impacts they aim for? When is it beneficial for a producer to comply with a standard? What kind of support do producers need to ensure that compliance with a standard is a worthwhile undertaking? This fourth and last paper of this series recapitulates some of the main results of the first three contributions taking as a framework the question: when and how do standards best work for producers? The fourth contribution concludes this series and outlines some recommendations for practice.

Accordingly, four categories were found suitable for organizing the research. The categories include:

- The impacts of private standards on global value chains.
- The impacts of private standards on producers and exporters.
- The interplay of public and private standards.
- How do standards best work for producers and exporters?

2. About this paper

Standards are essential to trade and play a key role in facilitating economic activities between anonymous agents. In reducing uncertainty standards are instruments to manage risk, to provide credibility and to build trust. Standards also make exchanges more efficient in simplifying transactions, guaranteeing a minimum quality and allowing for a certain level of predictability. But the role of standards in trade changed to also

being an instrument for product differentiation and market segmentation. While food safety and food quality standards play a key role in shaping international agri-food markets and trade, the emergence of new types of private standards such as Fairtrade, Rainforest Alliance or UTZ Certified broadens the use of standards to environmental protection, improving livelihoods, enhancing traceability, or differentiation from competitors. The latter is also increasingly pursued through food quality and safety standards.

In the past two decades a number of private standards have emerged, particularly addressing global environmental and social problems. These areas are often characterized by the absence of intergovernmental regulation or a lack of enforcement of national regulation. Private standards also became more important in governing quality and safety concerns in food markets as the introduction of performance and process based controls shifted the responsibility from public entities to private food companies and retailers.² At the same time, consumers have become more susceptible to these issues, and governments strengthened regulation and upgraded some of their requirements. These developments created a complex network of private and public standards regulating social and environmental concerns and quality and safety in food markets.

The OECD notes that ‘the relations between public and private sectors in the establishment and development of food quality standards are becoming increasingly complex as the numbers of both types of standards proliferate and become generally more stringent and varied in their applications in both national and international food markets’.³ Although the scope of this paper is wider than private and public food standards and also encompasses standards addressing environmental and social issues, the majority of the literature addresses food safety and quality issues – and forestry standards.

According to the Global Food Safety Initiative (GFSI),⁴ private labels – mostly on food safety and quality – accounted for about 22% of total retail food sales in 2010. Food safety and quality standards are less prevalent in traditional commodities, e.g. grains, sugar, coffee, cocoa, tea where traceability standards and labeling initiatives play a more important role. In forestry, the certified forest area amounts to 18% of total forest covered by a management plan and 9% of global forest coverage.⁵

The coexistence of public and private standards raises a number of questions. Some of the key ones are: how far do public standards influence private standard setting and vice versa; how different or similar are public and private standards’ requirements; and how do they overlap? This paper also sheds some light on questions such as: are private and public standards complimentary or contradictory? What roles can governments take vis-à-vis private standards? Should public and private standards be harmonized and how far is that process? This paper does not cover the discussion about the potential of private standards to be non-tariff barriers to trade.

Following a brief descriptive analysis of the literature, this paper starts by describing public standards, their objectives and how they influence trade. It goes on to outline the emergence, the scope and the objectives of private standards before discussing their influence on public standard setting. The (perceived) legitimacy of private standards represents an important aspect in the subsequent discussion on the relations of public and private standards as public use of private standards may be related to their perceived legitimacy. Thereafter, we discuss the possibilities for public authorities to support and facilitate the development of private standards and to influence their significance in the market. Finally, some examples of harmonization of and complementarities between public and private standards are presented.

3. Methodology

For this paper we employed a systematic literature review methodology that adopts a replicable, scientific and transparent process. It aims to minimize bias through exhaustive literature search of published and unpublished studies and by providing an audit trail of the reviewer’s decisions, procedures and

² Reardon, T. and E. Farina ‘The rise of private food quality and safety standards: illustrations from Brazil’, *The International Food and Agribusiness Management Review*, 4, 4, 2001.

³ Smith, G. ‘Interaction of Public and Private Standards in the Food Chain’ (OECD Food, Agriculture and Fisheries Working Papers, 2009).

⁴ GFSI. Position paper: ‘The Global Food safety Initiative: Once certified accepted everywhere’, 2010.

⁵ IISD. ‘The State of Sustainability Initiatives Review 2010: Sustainability and Transparency’, 2010.

conclusions'.⁶ Providing for comprehensiveness and comparability, this method captures the fragmented and heterogeneous field of research on private standards' impact on value chains with its many subfields, research questions, conceptual approaches and methodologies applied.

It also offers a framework to identify thematic gaps in the literature, to highlight areas more comprehensively covered and to provide evidence for informing policy and practice in this discipline. Based on a thematic analysis and on the breakdown of methodologies and conceptual frameworks applied, a systematic literature review approach also informs future research activities.

In the interest of readability, findings have been linked to constitute a narrative suggesting comparability of results. However, while the approach allows for the integration of heterogeneous research, findings have to be interpreted cautiously as they are based on different theoretical approaches and emerge from diverse methodologies. This particularly applies to the comparison of results.

The review process

The review process was guided by the methodology's main elements, rigor and traceability, and all steps taken were defined and documented in view of comprehensive and unbiased research. The review has been carried out following an established 'systematic review' methodology.

The methodology consists of three main phases: planning and search, screening, and extraction and analysis. In a first step the main questions guiding the research were defined and all relevant sources of literature were identified, namely: (i) identification of the main keywords used in the different streams of literature; these keywords were later used to build search strings in the most comprehensive academic search databases; (ii) identification of key journals that are not covered by these databases and use of an additional database to search these journals applying the same keywords; (iii) review of the references used in previous literature analysis; (iv) review of influential authors in the field; (v) identification of central research institutes and international organizations in the field and review of their publications; and (vi) identification of key articles and book sections providing background information on specific topics.

Three main sources of literature were used in our research: (i) three electronic databases namely EBSCO, Science Direct and ISI Web of Knowledge; (ii) previous literature reviews and publications by institutions working in this field; and (iii) cross-references in papers.

The next step in a systematic literature review consists of the selection of papers based on their relevance and quality. The screening process entails three steps: a title review, the review of abstracts and the full paper review. Before each step, inclusion and exclusion criteria had been defined to ensure transparency and the ability to replicate the process.

Lastly, in a final screening step, full papers were reviewed according to defined selection criteria, such as contribution to research, clarity of data collection and sampling methods, or the linkage between the methodology used and conclusions reached. This screening exercise resulted in 78 papers that have been analyzed for this literature review (please see bibliography for details).

The analysis of these papers has been divided into two areas: a descriptive analysis and a thematic analysis. The former describes the type of studies included in this review. The latter analyses and synthesizes the main research findings.

For more details on the methodology and the review process please refer to the appendices.

In chapter 4, we focus our analysis on (i) the main issues covered in research and its main outputs, (ii) answering the above questions relating to the interplay of private and public standards, and (iii) drawing conclusions from the research output as to its explanatory and analytical power and the direction of future research. First, we will provide an overview of the scope of research.

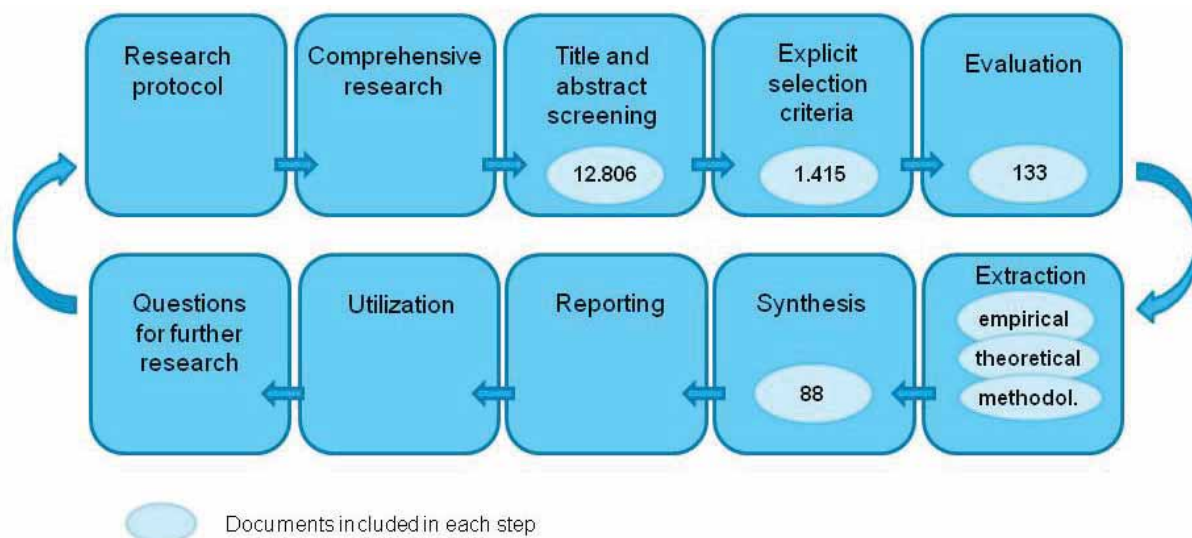
⁶ Tranfield, D., D. Denyer and P. Smart. 'Towards a Methodology for Developing Evidence-Informed Management Knowledge by Means of Systematic Review', *British Journal of Management*, 14, 3, 2003.

4. Descriptive analysis

This descriptive analysis sets the framework for the thematic analysis by providing background information on the research carried out. It includes information on the methodologies adopted and the main topics covered. It also answers the questions: which standards and products are covered by research; is there a regional focus; and what is the date range of the articles?

For this review we selected a total of 88 documents out of which 32 are empirical, 51 articles/reports are theoretical and/or conceptual in nature (including papers working only with secondary data), three are policy papers published by government institutions and 2 are guides by international organizations. Empirical papers are based on case studies (27), on a survey (3) or on econometric analyses (2). Given the paucity of academic literature on this topic we decided to include book chapters and government and institutional reports. Academic research only recently started paying attention to non-state governance.

Figure 1. Steps in a systematic review process



The product, geographical and standards related scopes of the documents included in this analysis are quickly described as relatively uniform.

The product focus of studies is rather limited. The majority of studies look at standards (incl. GIs) applicable to food products (incl. beverages) (36), out of which two (2) studies look at fishery and aquaculture and another two (2) at horticultural products. The remaining studies/reports (52) do not specify a product scope. Accordingly, 23 studies deal with food safety and quality standards, followed by twelve (12) documents addressing forestry standards, six (6) into Geographical Indications (GIs), five (5) studies addressing Good Agricultural Practices (GAP) standards, three (3) looking into Organic standards, and two (2) into fishery and aquaculture standards. The remaining 37 documents/reports do not specify a standards related focus or address a large number of standards without differentiating them.

Fourteen (14) out of the 88 studies deal with Developing or Transitioning Countries, and another twelve (12) studies focus on developed countries, mainly the United States and Europe. The remainder of studies does not specify a geographical focus.

More than half (49) of the total of 88 studies have been published in the past five years (2007-2011) and a total of 63 studies have been produced in the past ten years (2001-2011).

When it comes to topical focuses, most studies cover a relatively wide field which makes it difficult to subcategorize them under a certain topic. Twenty (22) studies have been found to address the relationship between public and private standards, eight (8) discuss issues around standards' legitimacy, six (6) highlight more conceptual sectoral governance issues; another six (6) documents are related to public procurement issues; five (5) describe the governmental use of standards; three (4) documents talk about the relationship of standards and WTO regulation; 2 studies benchmark standards and 7 address GIs.

As a result of the uniform nature of the studies, results and conclusions are presented more generally, enriched by specific examples.

5. Introducing public and private standards

The past two decades saw the standards landscape evolve quickly with significant changes in social, environmental and food safety and quality standards. Some of the key drivers of these developments include

- Greater attention consumers put on food safety and quality,
- A globalization of agricultural food chains and
- A shift from public to more private market governance; partly due to lack of technical expertise and lack in financial resources to deal with ever more complex standards issues on public level.⁷

Given that many private standards are designed to facilitate compliance with public regulation, changes in public standards often result in changes in private standards also. This dynamic, nevertheless, does not explain the emergence of standards addressing more social and environmental issues. Social and environmental standards reflect the growing consumer awareness of social and environmental conditions of production. They are also a response to a number of scandals involving multinational companies and civil society pressure to improve working conditions and livelihoods and reduce negative environmental impacts.

The literature is leading a discussion about whether more stringent public and newly emerged private standards represent *barriers to trade* or *potential catalysts for trade*. While a majority of researchers seem to maintain the barriers to trade argument,⁸ it was a study by Jaffee and Henson⁹ that reversed the argument describing how exporters turned this challenge into an opportunity. In that case, exporters used food safety and quality standards to access new markets by modernizing supply chains, and implementing management and good production practices. This view is shared by an increasing number of authors, such as Jongwanich,¹⁰ Swann¹¹ and others.¹² Overall, the effects of standards on trade (trade facilitating vs. trade restricting) seem to be context specific and differ according to the country and industry analyzed and on the research methodology applied (case study, exporter survey, econometric model). While the impacts of private standards have been discussed elsewhere,¹³ this chapter provides a brief introduction to public and private standards and constitutes the basis for the following chapters.

Büthe and Mattli offer a typology of 'global regulation'.¹⁴ Although this typology includes standards that go beyond the scope of this paper, e.g. financial reporting or financial accounting standards, it provides a useful typology of standards by differentiating the institutional setting of standard setting (public or private)

⁷ Henson, S. and J. Humphrey. 'Understanding the Complexities of Private Standards in Global Agri-food Chains as they Impact Developing Countries', *Journal of Development Studies*, 49, 9, 2010; Büthe, T. and W. Mattli 'The New Global Rulers: The Privatization of Regulation in the World Economy', Princeton University Press, Princeton 2011.

⁸ Alvarez, G. and O. Von Hagen. 'The impacts of private standards on producers in developing countries. Literature Review Series on the Impacts of Private Standards - Part II', 2011; Von Hagen, O. and G. Alvarez. 'The impacts of private standards on global value chains. Literature Review Series on the Impacts of Private Standards - Part I', 2011.

⁹ Jaffee, S. and S. Henson. 'Standards and agro-food exports from developing countries: rebalancing the debate', Policy Research Working Paper Series 3348, 2004.

¹⁰ Jongwanich, J. 'The impact of food safety standards on processed food exports from developing countries', *Food Policy*, 34, 5, 2009.

¹¹ Swann, P. 'International Standards and Trade - A review of the empirical literature', OECD, 2010. Swann includes standards conforming to ISO, International Electrotechnical Commission (IEC) or International Telecommunication Union (ITU), and standards common to a group or countries or standards harmonized at least in two countries.

¹² International Institute for Environment and Development (IIED). 'Standard Bearers: Horticultural exports and private standards in Africa', 2009.

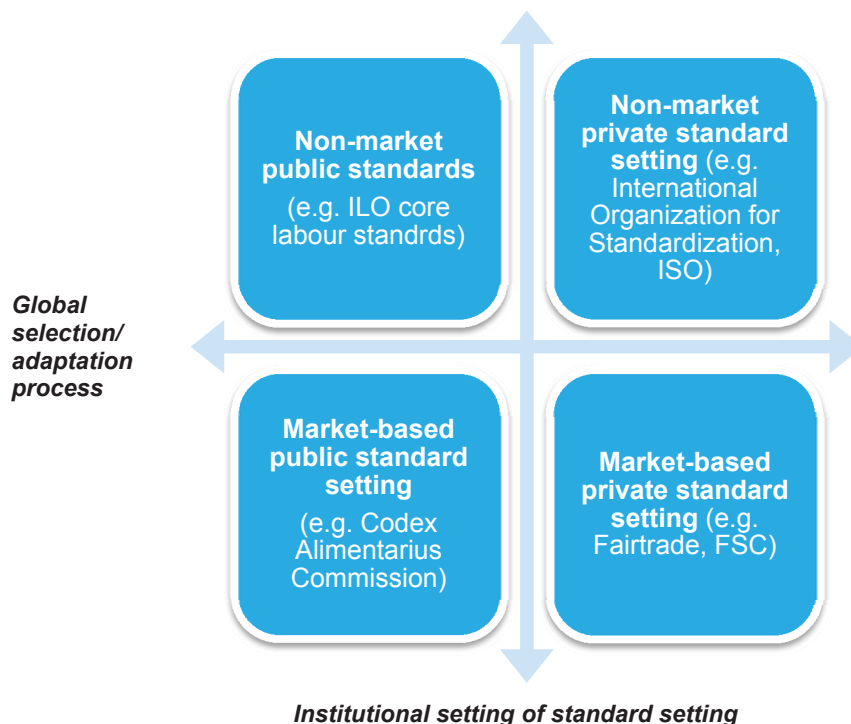
¹³ Alvarez, G. and O. Von Hagen. 'The impacts of private standards on producers in developing countries', ITC, 2011; Von Hagen, O. and G. Alvarez. 'The impacts of private standards on global value chains', ITC, 2011.

¹⁴ Büthe, T. and M. Walter. 'The New Global Rulers: The Privatization of Regulation in the World Economy', Princeton University Press, Princeton, 2011.

and the global selection/adaptation process (market-based or nonmarket-based). These distinctions result in four types of standards (see figure 2):

- Public nonmarket-based standards collaboration of intergovernmental organizations or cooperation among domestic regulators
- Public market-based standards result from market-like competition between public regulatory agencies of individual states or regional and multilateral standard setting bodies.
- Nonmarket-based private regulation by private bodies dominating one or several sectors.
- Market based private regulation by firms or any other body, such as NGOs, research institutes, multi-stakeholder coalitions/roundtables and industry associations.

Figure 2. Typology of standards



Source: Bütthe & Mattli 2011.

With a myriad of standards in use, all kinds of production, processing and transporting activities are subject to at least one, often several standards. These vary in scopes, requirements, and implementation and verification policies. It should also be noted that the distinction between these four types of standards is not always straightforward and there are cases where a clear distinction is difficult. Two examples illustrate this:

The ISO is a private organization that aims to facilitate trade and technology transfer in developing international standards serving as standards for standards. It creates international 'private' standards that are not market based. The WTO recognizes the important role the ISO plays towards the international harmonization of standards. In fact, ISO is an interesting example of the difficulty in clearly differentiating private and private standards. The ISO is a network of national standards institutes of 162 countries recognized as the body being 'most representative of standardization in its country'.¹⁵ Member bodies participate and exercise voting rights on any technical committee and policy committee. They form committees and working groups developing the standards. While the majority of ISO member bodies are

¹⁵ Please see: http://www.iso.org/iso/about/iso_members/member_bodies.htm accessed on 21 November 2011.

government agencies (72%), 22% are private (including non-profit) and 6% quasi public.¹⁶ The purpose of ISO is to serve as a 'public' standards body and it has seemed to emerge as an inter-governmental organization for international standards harmonization. This role is reinforced by the WTO establishing Agreement of 1994 which obliges members to adopt international standards wherever feasible, including ISO standards.

Another case that complicates drawing a clear line between private and public standards is the Codex Alimentarius standards. The Codex Alimentarius Commission was created by FAO and WHO to develop food standards and guidelines to protect health of the consumers and ensuring fair trade practices in the food trade. It also looks to promote coordination of all food standards related work undertaken by international governmental and non-governmental organizations.¹⁷ Codex Alimentarius standards are developed within the auspices of an intergovernmental organization, the UN (FAO/WHO), and member countries nominate delegates to participate. Standards are voluntary, but they are also considered by the WTO agreements to be the benchmark for food safety standards for international trade – thus making them de facto mandatory.

5.1. The basics in public standard setting

While tariffs and quotas have been reduced significantly since the creation of the WTO the rise in public and private standards is one element contributing to the growing amount of non-tariff measures. So as to counter a trade impeding impact of non-tariff measures, a number of agreements were developed. Key agreements include.¹⁸

- The **Sanitary and Phytosanitary (SPS) Agreement**: this agreement lays out the basic rules for food safety and animal and plant health standards. Countries are allowed to develop their own standards given that these standards are based on science, and are only applied to the extent necessary to protect human, animal or plant life or health. Also, they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Importantly, member countries are encouraged to use international standards, guidelines and recommendations where they exist. This gives international standards setting bodies such as the Codex Alimentarius de facto mandatory status.
- The **Technical Barriers to Trade (TBT) Agreement**: this agreement aims to ensure that regulations, standards, labeling, customs forms, testing, certification procedures and other technical aspects do not create unnecessary obstacles to trade. Members still have the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or the environment.
- The **Trade Related Intellectual Property Rights (TRIPS) Agreement**: this agreement introduced global minimum standards for protecting and enforcing intellectual property rights in international trade. It requires similar intellectual property regimes from all signatory nations. WTO members are obliged to adapt their laws to the minimum standards of protection and to comply with detailed obligations for the enforcement of intellectual property rights.

A key area regulated by public standards is food safety and quality and environmental protection. Food safety constitutes a public good aiming to reduce risks to human health related to food consumption. It is generally seen as a responsibility of the state as markets alone will not always provide the socially desirable level of food safety, although companies have several legal and market incentives to provide

¹⁶ Loconto, A. and L. Busch. 'Standards, techno-economic networks, and playing fields: Performing the global market economy', *Review of International Political Economy*, 17, 2010.

¹⁷ Please see: http://www.codexalimentarius.net/web/index_en.jsp, accessed on 21 November 2011.

¹⁸ Please see: www.wto.org accessed on 22 August 2011.

effective food safety control.¹⁹ Public authorities need to correct this market failure resulting in information asymmetries²⁰ and consumption externalities.²¹

This is particularly relevant for a good's *experience* attributes, where consumers can evaluate characteristics such as quality and utility only upon consumption and *credence* attributes, which are impossible for a consumer to ascertain even after consumption or utilization of a good.²² In these cases, standards and certifications facilitate the functioning of the market. They define the specifications of the product and provide consumers with a guarantee concerning the product's characteristics, such as the process of production, ingredients used or its utility impact. Certifications and labels reduce the information asymmetry between the seller and the buyer. For *search* attributes,²³ market incentives mostly are strong enough to provide the desirable amount of food quality, because a consumer can evaluate the product before buying and consuming it.

A number of governments started requesting preventive systems of food safety control, notably the HACCP²⁴ standard system. HACCP is a preventive system that allows identifying potential food safety hazards during the food production and preparation process. In combination with product traceability systems, this allows for the enforcement through inspection of production records rather than finished product inspection. This shift from regulating the product to regulating the production processes makes regular product inspection and firm plant visits redundant, which in turn reduces costs. Public authorities' controls changed from product inspection to control whether appropriate systems are in place and function correctly. Authorities can rely on reports and work more efficiently, which results in more controls being carried out.²⁵ This delegation of quality control to the sellers constitutes a major shift in the role of public authorities.

Public authorities not only set minimum requirements for food safety but also define minimum quality standards. While the majority of standards developed by governments are mandatory and also include grades, weights and measures mainly for agricultural commodities, governments are also involved in the development of *voluntary* standards. For example, a number of governments participate in the development of the International Organization for Standardization (ISO) standards.

In the case of the organic standards, governments took a key role in developing national (e.g. Chile, Japan and the United States of America) or regional (e.g. European Union) standards. This also provided for a harmonized definition of the term 'organic' and provided a legal framework for accrediting certification bodies. A national authority implements this legal framework on national level. Goods to be imported into the EU as organic must meet organic production and procedural standards as defined in EC regulation. Production, processing, documentation, inspection and certification need to be of equivalent standards to EU Regulation, meaning that regulation in the exporting country does not need to be identical, but procedure and actions need to be in place demonstrating 'that the legislator targets of the Regulation have been met'.²⁶ This allows exporting countries to develop their own organic production and certification

¹⁹ Caswell, J.A., M.E. Bredahl, and N. Hooker. 'How Quality Management Metasystems are Affecting the Food Industry', *Review of Agricultural Economics*, 20, 2, 1998.

²⁰ The seller of a product has more information about its attributes than the buyer.

²¹ The consumption of a product has positive/negative effects on a third party.

²² A good where certain product characteristics cannot be verified by the consumer after consumption are called credence goods. The consumer cannot determine the good's quality and utility after purchase. Some examples include dietary supplements or bottled water. There is *asymmetric information* between the producers and the consumer about the actual characteristics of the product, including health and safety features. This is referred to as *market failure*. As the consumer has no possibility of verifying products characteristics, the government needs to ensure that certain minimum levels of, for example, health and safety measures are met. Goods where consumers can evaluate their utility and quality during or after consumption are called *experience goods*. Helmets are a good example of an experience good. It is important to note that a lot of products combine search, experience and credence attributes.

²³ Search attributes are attributes that can be ascertained by consumers prior to buying and consuming a product. Consumers have full information about the product's characteristics before using/consuming it.

²⁴ HACCP is a food safety management system and stands for hazard analysis and critical control points. HACCP addresses physical, chemical and biological hazards and is used in the food industry to identify potential food safety hazards.

²⁵ Smith, G. 'Interaction of Public and Private Standards in the Food Chain' (OECD Food, Agriculture and Fisheries Working Papers, 2009).

²⁶ Barrett, H.R., A.W. Browne, P.J.C. Harris and K. Cadoret. 'Organic certification and the UK market: organic imports from developing countries', *Food Policy*, 27, 4, 2002.

systems. Most policy recommendations to governments are provided by voluntary accreditation schemes, with the International Federation of Organic Agriculture Movements (IFOAM) being the most influential.²⁷

In developing an EU recognized national certification system Chile improved market access for its organic producers to the EU and reduced transaction costs. Exporters no longer need to request a special import permit to import their organic products into the EU. National standards seem to lead to 'superior export performance'.²⁸ From an economic point of view, incentive based voluntary standards can be more efficient than mandatory regulation, generating lower compliance and transaction costs.²⁹ This emphasizes the importance of the development of national voluntary standards and the potential impact on trade that harmonized standards could have. However, research generated mixed results as to the efficiency of voluntary standards in achieving socially and environmentally desirable outcomes.³⁰

5.2. Developing private standards

For the purpose of this paper private standards are understood as standards developed by private entities such as companies, non-governmental organizations or multi-stakeholder coalitions. These standards may vary in scope, ownership and objectives. Objectives range from environmental conservation, ensuring food safety, protection of social and human rights, to promoting good agricultural and manufacturing practices. Private standards can be numerical standards defining required characteristics of products such as contaminant limits or maximum residue limits, or process standards³¹ prescribing the production processes (including performance objectives) or pertaining to management system and documentation requirements.

The Standards and Trade Development Facility (STDF) of the WTO describes its role as 'promoting best practices in delivering technical assistance to enable food chain operators to implement programs of food safety management'.³² For example, enforcement authorities commissioned by the UK Food Standards Agency adjust the frequency of inspection of production facilities according to whether companies comply with private standard schemes (Henson, Humphrey 2008). We also address those standards that Henson and Humphrey call private standards *schemes*. This term not only comprises the standard itself but also covers standard setting procedures, adoption and implementation practices, and conformity assessment and enforcement. Examples for such schemes are Fairtrade or the Forest Stewardship Council (FSC) and for food safety standards the British Retail Consortium (BRC), International Food Standard (IFS), or the GLOBALG.A.P. Fruit and Vegetables scheme.³³

Drivers for the development of private standards are numerous. They include:

- Increased consumer awareness of the impact of food on health,
- Food quality and due diligence requirements assigned to food chain operators,
- Growing societal and consumer demand for more responsibly produced goods and information about the production and processing conditions of products. The latter resulted in an increasing number of consumers and companies basing purchasing decisions on ethical criteria and a notion of corporate responsibility.

²⁷ *Ibid.*

²⁸ Swann, P. 'International Standards and Trade - A review of the empirical literature', OECD, 2010.

²⁹ Martinez, M.G. and Bañados, F. 'Impact of EU organic product certification legislation on Chile organic exports', *Food Policy*, 29, 1, 2004.

³⁰ Von Hagen, O. and G. Alvarez. 'The impacts of private standards on global value chains', ITC, 2011; Alvarez, G. and O. Von Hagen. 'The impacts of private standards on producers in developing countries', ITC, 2011; Jaffee, S., H. Spencer and L. Rios Diaz. 'Making the grade: Smallholder Farmers, Emerging Standards, and Development Assistance Programs in Africa. A Research Program Synthesis', 2011.

³¹ Process and production methods (PPMs) are particularly interesting to consumers caring, for example, about environmental impact of the production. Labour standards share many characteristics with process standards.

³² Please refer to: <http://www.standardsfacility.org/en/AUWhatWeDo.htm>.

³³ Henson, S. and J. Humphrey. 'The Impacts of Private Food Safety Standards on the Food Chain and on Public Standard-Setting Processes', 2009.

Particularly in the food sector, firms use private standards to differentiate from competitors, to build brand recognition and consumer loyalty, and to define and occupy market niches.³⁴ This leads to companies establishing standards beyond public requirements for food safety. Examples include Tesco Nature's Choice, Filière Agriculture Raisonnée by Auchan or Carrefour's Filière de Qualité. Given the high transaction costs for individual firms of establishing their own standard in supply chains, firms started to pressure industry organizations and established coalitions and consortia (national and international) for the development of collective standards. Examples include the Global Food Safety Initiative (GFSI), Global GAP, or the British Retail Consortium (BRC).³⁵

Such coordinated approaches to standard setting have a number of advantages. Firms can:

- Potentially create competitive advantages;
- Jointly pursue common interests on a non-competitive platform;
- Increase the number of potential suppliers from which to procure.

This leads to more harmonized standards. The GFSI, for example, benchmarked and recognized 13 schemes as equivalent. These advantages would also apply to more coordinated approaches vis-à-vis social and environmental standards. Yet, the development of non-competitive platforms and coordinated approaches among standard setters for these standards is in very early stages. First steps of non-competitive collaboration are taken by the 4C Association in the coffee sector and singular benchmarking efforts occurred. For example, the 4C Association recently announced a change in strategy to function as pre-competitive platform that promotes all sustainability coffee standards aiming to create synergies and increase efficiency of services. It aims to become *the* network for actors working on sustainability in the coffee sector.³⁶ Other moves towards more harmonized approaches include benchmarking initiatives between standards and joint control and certification auditing.

In some cases companies exceed public standards aiming (i) to build influence on private standard setting in case public authorities decide to further develop public standards and (ii) to be able to select a private standard of their choice that minimizes their costs in complying with public standards. This pre-emptive strategy of exceeding public standards is well described in Mc Cluskey and Winfree.³⁷ In a survey of the Committee on Sanitary and Phytosanitary Measures of the WTO,³⁸ over two thirds of respondents replied that 'at least some of the requirements of private standards exceed those of the relevant international standards and official import requirements'. These include more detailed operational procedures, lower MRLs, among others. But pre-emptive strategies also have other reasons. Lutz describes a case where private standard have been developed as a measure to pre-empt additional public regulation.³⁹

In addition, standards are a tool to more efficiently manage geographically wide spread supply chains by standardizing product requirements and reducing transaction costs.⁴⁰ Companies also use standards to ensure a quantitatively and qualitatively consistent supply and build their own brand specific product attributes. Especially credence attributes of products relating to production and handling of products are guaranteed through the use of standards and certification.⁴¹ In addition to these standards an 'intense dynamic has emerged around initiatives dealing with social, environmental, and sustainability concerns - pushed by international agreements and civil society pressures - giving rise to a complex and evolving

³⁴ Fulponi, L. 'Private standard schemes and developing country access to global value chains: challenges and opportunities emerging from four case studies', 2007.

³⁵ Henson, S.J. and J.R. Northen. 'Economic Determinants of Food Safety Controls in the Supply of Retailer Own-Branded Products in the UK', *Agribusiness*, 14, 2, 1998.

³⁶ Please refer to: <http://www.4c-coffeeassociation.org/en/press-release.php>

³⁷ McClusky, J. and J. Winfree. 'Pre-empting Public Regulation with Private Food Quality Standards', *European Review of Agricultural Economics*, 36, 4, 2009.

³⁸ WTO Committee on Sanitary and Phytosanitary Measures. 'Effects of SPS-related private standards - compilation of replies', G/SPS/GEN/932/REV 1, 2009.

³⁹ Lutz, S., T.P. Lyon and J.W. Maxwell. 'Quality Leadership when Regulatory Standards are Forthcoming', *The Journal of Industrial Economics*, 48, 3, 2000.

⁴⁰ Holleran, E., M.E. Bredahl and L. Zaibet. 'Private incentives for adopting food safety and quality assurance', *Food Policy*, 24, 6, 1999.

⁴¹ Henson, S. and B. Traill. 'The demand for food safety: Market imperfections and the role of government', *Food Policy*, 18, 2, 1993.

landscape of voluntary standard initiatives in agricultural and agrifood markets.⁴² While standards relating to ethical concerns, sustainability issues or product quality, in most cases can be considered business-to-consumers (B2C) standards (with some using a label), food safety, traceability and GAP standards, usually are business-to-business (B2B) standards.

By implementing private standards some companies claim that their product safety is above that required by public authorities. This entails the danger of eroding public confidence in public food safety authorities. Additionally, public confidence in national food safety authorities is in the interest of all stakeholders in the food industry. According to the FAO/WHO Codex Alimentarius Commission⁴³ reducing minimum residue levels below the official amount, as done by some corporations through additional private standards, does not provide additional protection of public health. The same applies to restricting the number of residues where it has not been scientifically proven that multiple residues might have a synergistic toxicological effect. Therefore, the level of detail of private food standards needs to be scientifically proven, for example when it comes to exceeding minimum residue levels. Private standards thus risk undermining the authority of the texts adopted by the FAO/WHO Codex Alimentarius Commission (CAC). Standards going beyond CAC mainly address traceability, documentation and testing requirements.

This development also has challenging implications for producers and exporters. Private standards exceeding public requirements are more difficult to comply with. Private food standards tend to impose the same requirements to suppliers all over the world where these face very different preconditions in meeting them. Aiming to alleviate this problem, CAC standards, for example, focus on the relevant factors to be taken into account and the results to be achieved. So, they prescribe the 'what' and 'why', but do not detail the 'how'. The reason for this is the recognition of the very different circumstances and realities in member countries. The 'why', the actions, procedures and provisions to be put in place are translated by national governments, producers or food business associations and individual food businesses.

Preventive food safety management resulted in the development of process standards and codes of conduct instead of end-product checks. Smith⁴⁴ concludes that private food quality systems are often more flexible and agile in responding to consumer needs than national or international public standards. Nevertheless, there remains a trade-off between an efficient food quality control system operated by a business and the most efficient food quality outcome for society given the risks and transaction costs associated with expensive supply chains (e.g. traceability, or separation for composite products).

Finally, the question whether the SPS Agreement is applicable to private standards has not been settled conclusively. In a nutshell, some countries argue that Article 13 of the SPS Agreement (Agreement on the Application of Sanitary and Phytosanitary Measures) obliges governments to ensure that product certification and labeling standards developed by private entities are consistent with WTO rules. Article 13 requires governments to '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'. Conversely, others argue that Article 13 is not legally binding for private certification schemes as they do not qualify as non-governmental entities. The question whether private standards could be considered as 'non-governmental entities' as defined in the WTO SPS Agreement remains contested.⁴⁵ Roberts⁴⁶ examines the compatibility of private standards with the current set of multilateral trade rules in more detail. He states that the SPS Agreement has not been effective in addressing private standards, mainly regarding two issues: (i) legal issues that relate to the multilateral agreement structure of the General Agreement on Tariffs and Trade (GATT), SPS, and TBT Agreements and (ii) practical issues over the implications of private standards.⁴⁷

⁴² Jaffee, S., S. Henson and L. Rios Diaz. 'Making the grade: Smallholder Farmers, Emerging Standards, and Development Assistance Programs in Africa'. A Research Program Synthesis, 2011.

⁴³ FAO/WHO Codex Alimentarius Commission. 'Consideration of the impact of private standards', 2010.

⁴⁴ Smith, G. 'Interaction of Public and Private Standards in the Food Chain', OECD, 2009.

⁴⁵ Wouters, J., A. Marx and N. Hachez. 'Private standards, global governance and transatlantic cooperation', 2008.

⁴⁶ Roberts, M. 'The compatibility of private standards with multilateral trade rules: Legal issues at stake', 2009.

⁴⁷ See also: International Institute for Environment and Development (IIED). 'Standard Bearers: Horticultural exports and private standards in Africa', 2009; Manoi, J. 'Are eco-labels consistent with World Trade Organization agreements?', *Journal of World Trade*, 38, 1, 2004.

As competition in international food markets is shifting from price based to quality based, private food standards are expected to become more important and widespread. Although firm incentives to carry out control of credence attributes are theoretically small, the contrary development is evident and retailers and food firms are found to compete on the basis of food safety and quality, increasing the number of private standards.⁴⁸ This inevitably leads to the discussion about the legitimacy of private standards and the question what makes a legitimate standard. Legitimacy becomes particularly relevant when discussing overlaps in private and public standard setting and in cases where private standards substitute public standards and assume regulatory functions. Therefore, the following section presents the main approaches to defining legitimacy of private standards.

6. Constituting the legitimacy of private standards

The legitimacy of private standards is a question that sparks controversial debate in the literature. It is also too complex a question to be discussed comprehensively in this literature review. Nevertheless, the question of legitimacy is related to the wider discussion about private versus public standard setting. Thus, this part aims to illustrate the main elements of this debate related to legitimacy provided by the state.⁴⁹ This also sets the frame for the subsequent chapters.

In fact, defining the factors that determine whether a standard is legitimate already represents the first subject of contention. While we decided not to reflect this debate in its entirety, we do incorporate some of the standards-related literature discussing legitimacy of standards. The main reason for this is the fact that private standards increasingly take a regulatory role, particularly with respect to environmental protection, food safety and quality assurance and social protection. In addition to this, governments and inter-governmental bodies express concerns about the legitimacy of these standards in general, and in comparison to the existing regulatory standards and regulatory decision making processes in particular.⁵⁰

Private standards are governance mechanisms beyond the state that claim legitimacy, although these may not be elected mandate holders and do not have democratic internal structures. But without a certain extent of legitimacy, standards are not accepted as regulatory instruments. Accordingly, in a much cited contribution to the discussion on the legitimacy of standards, Cashore⁵¹ argues that private regulation based on forestry standards is only a viable and durable option if it gains a certain extent of legitimacy. The author distinguishes interest based *pragmatic* legitimacy; normative oriented *moral* legitimacy; and a culturally focused *cognitive* legitimacy. Cashore investigates the conditions under which standards, or as he calls it 'non-state market-driven governance systems', emerge and gain authority to play a role in public policymaking. In a later work Cashore, Auld and Newsom⁵² study seven country cases in the United States and Europe and find that producers that depend heavily on exports are more likely to support forest certification programs. In adopting forest certification, forest companies and landowners grant legitimacy to certification programs to play their role in regulation.

Henson and Humphrey⁵³ propose an independent set of indicators to measure the relative legitimacy of specific standards: the influence of value chain stakeholders on the standards-setting process, the extent to which the standard-setting process is transparent, the inclusion of developing country interests, and the scientific foundation on which they are based. On this basis, the authors cite the lack of representation of smaller firms and marginalized groups as a challenge to the legitimacy of some standards. A key concern surrounding the legitimacy of the standards is whether they are 'science-based', questioning if private food safety standards do in fact provide appreciably higher levels of protection against food safety hazards than

⁴⁸ FAO/WHO Codex Alimentarius Commission. 'Consideration of the impact of private standards', Rome, 2010.

⁴⁹ Legitimacy can originate from a number of sources besides the state, such as legal authority, traditional structures, stakeholder reputations, science, expertise, market power, etc.

⁵⁰ Henson, S. and J. Humphrey. 'The Impacts of Private Food Safety Standards on the Food Chain and on Public Standard-Setting Processes', 2009.

⁵¹ Cashore, B. 'Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority', *Governance*, 15, 4, 2002.

⁵² Cashore, B., G. Auld and D. Newsom. 'Forest certification (eco-labeling) programs and their policy-making authority: explaining divergence among North American and European case studies', *Forest Policy and Economics*, 5, 3, 2003.

⁵³ Henson, S. and J. Humphrey. 'The Impacts of Private Food Safety Standards on the Food Chain and on Public Standard-Setting Processes', 2009.

those under the purview of the SPS Agreement. Finally, the credibility of the standard setters is a precondition for private standards to obtain legitimacy. But credibility alone does not guarantee legitimacy.

According to Marx⁵⁴ the main elements of legitimacy are made of transparency in standard setting and in standards implementation. Accordingly, Auld and Gulbrandsen⁵⁵ investigate how the Marine Stewardship Council (MSC) and FSC use transparency in auditing and rule-making processes to enhance legitimacy. For example, both standards publish summarized assessment reports and audit outcomes online.

Another factor influencing the legitimacy of standards is the actual impact of standards on producers and exporters. Gulbrandsen⁵⁶ for example argues that private forestry standards supplement global forest regimes, fill the gaps of public regulations and set standards for well managed forests. A precondition thereof seems to be a clear market benefit resulting from the compliance with the standard.

Marx⁵⁷ agrees with this view and additionally differentiates input and output legitimacy. Input legitimacy 'refers to the degree of inclusiveness and transparency of the internal decision making process with regards to standard setting'. Output legitimacy refers to the 'effectiveness of the standard setting initiatives and focuses on the enforcement mechanisms'.⁵⁸ Similarly, Nadvi and Wältring⁵⁹ define legitimacy as being a function of the 'manner in which monitoring and certification takes place' and 'the type of actors engaged in defining the standard'. Still, a report published by the Codex Alimentarius Commission⁶⁰ finds that 'overall, stakeholder input in private food standards is limited' and the perspective of small producers from developing countries is often not taken into consideration. Similarly, summarizing the results from six case studies UNCTAD finds that many developing countries are not participating in standard setting and need capacity building to participate in standard setting activities.⁶¹

Bernstein and Cashore define legitimacy as 'the acceptance of shared rule by a community as appropriate and justified'.⁶² The authors focus their work on how political legitimacy can be achieved by forestry standards. They identify a three-phase process through which these standards might gain legitimacy: initiation, initial firm uptake and support. The latter is achieved when a critical mass of actors applies the rules set by the standard. Political legitimacy is achieved when the standards development organization is recognized as 'a legitimate arena in which to develop appropriate standards'.⁶³ Meidinger also produced several papers on forest certification. The author offers a detailed analysis of forest certification with a focus on FSC⁶⁴. He discusses the role of forest certification in civil society and global governance and also the legitimacy of FSC stating that it 'relies primarily on the public legitimacy of environmental (and to a lesser extent labor and human rights) NGOs'. Meidinger added that 'certification systems will have to develop their own legitimacy', a statement that demonstrates great foresight as this is exactly what standards development organizations and the ISEAL Alliance have been working on in the past years.⁶⁵

⁵⁴ Marx, A. 'Global Governance and the certification revolution. Types, trends and challenges, Leuven Centre for Global Governance Studies', Working Paper No. 53, 2010.

⁵⁵ Auld, G. and L.H. Gulbrandsen. 'Transparency in Nonstate Certification: Consequences for Accountability and Legitimacy', *Global Environmental Politics*, 10, 3, 2010.

⁵⁶ Gulbrandsen, L.H. 'Overlapping public and private governance: can forest certification fill the gaps in the global forest regime?' *Global Environmental Politics*, 4, 2, 2004.

⁵⁷ Marx, A. 'Global Governance and the certification revolution. Types, trends and challenges, Leuven Centre for Global Governance Studies', Working Paper No. 53, 2010.

⁵⁸ *Idem*, p. 14.

⁵⁹ Nadvi, K. and F. Waltring. 'Making sense of global standards', Cheltenham, Edward Elgar, 2003.

⁶⁰ FAO/WHO Codex Alimentarius Commission. 'Consideration of the impact of private standards', Rome, 2010.

⁶¹ UNCTAD. 'Food Safety and Environmental Requirements in Export Markets - Friend or Foe for Producers of Fruit and Vegetables in Asian Developing Countries?', Geneva, 2007.

⁶² Bernstein, S. and B. Cashore. 'Can non-state global governance be legitimate? An analytical framework', *Regulation & Governance*, 1, 4, 2007.

⁶³ *Idem*, p.361.

⁶⁴ Meidinger, E. 'New Environmental Law: Forest Certification', *Buffalo Environmental Law Journal*, 10, 2003.

⁶⁵ *Idem*.

Courville⁶⁶ examined the accountability dimension of legitimacy. She compares accountability mechanisms of members of the International Social and Environmental Accreditation and Labelling Alliance (ISEAL Alliance) and argues that accountability is not only a matter of 'pre-envisaged institutional design' but evolves through 'pragmatic responses to pressures and demands'. The author also points towards the role institutional learning plays in the evolution of accountability regimes. Further aspects of legitimacy are discussed in a number of papers, book chapters and conference papers. For example: Cashore, Auld, Newsom.⁶⁷ Bernstein and Cashore,⁶⁸ Cashore *et al.*,⁶⁹ Demas and Young⁷⁰ discuss the legitimacy of forest certification and Fuchs *et al.*,⁷¹ and Ranville⁷² discuss the legitimacy of retail standards. More generally, Wolf,⁷³ and Nadvi and Waltring⁷⁴ discuss the legitimacy of private standards.

In a nutshell, the different notions of legitimacy found in the literature revolve around the three concepts of transparency, inclusiveness and accountability and the different stages of (i) standards setting, (ii) standard implementation and the certification process, (iii) standard monitoring, and (iv) the impacts of standards. The key elements according to which these stages are scrutinized include: the assurance of a transparent process, the inclusion of diverse interests (inclusiveness), the scientific foundation of requirements, and the accountability of standard organizations. The concepts of legitimacy tend to focus on one or two stages that are analyzed according to one or several elements of legitimacy. It is important to note that concepts such as accountability, transparency and inclusiveness are overlapping as for one of them to function it requires that the other two be equally respected. For example, to achieve full accountability organizations need to be transparent; and inclusiveness is not very useful if you are not at the same time accountable to the stakeholders you are including. Figure 3 provides an overview of the key elements of legitimacy.

According to these stages, the ISEAL Alliance, an association for social and environmental standards, in consultation with the member organizations and broader stakeholder involvement, developed a Code of Good Practice for *Setting* Social and Environmental Standards. The Association has also formulated codes of good practice covering *verification* practices and *impact* measurement, which provide guidance to standard setting organizations. It is currently developing its 'Code of Good Practice for Assuring Compliance with Social and Environmental Standards' setting out requirements for auditing, certification and accreditation bodies. Bernstein offers a comprehensive analysis of what constitutes the legitimacy (and credibility) of the ISEAL Alliance. The usefulness of these 'best practice' guidelines relies to a certain extent on the credibility and legitimacy of the ISEAL Alliance itself.

In summary, it is evident that a number of approaches co-exist aiming to define what makes a legitimate standard. This section provides an overview of these perspectives and the main concepts behind them. It is important that the discussion of the legitimacy of private standards and the different elements constituting standards' legitimacy be kept in mind, while looking at the complementarities, overlaps and conflicts of private and public standards. Legitimacy of private standards is particularly critical when private standards substitute public standards and assume regulatory functions. The same applies to cases where private standards are referenced in public norms.

⁶⁶ Courville, S. 'Understanding NGO-based social and environmental regulatory systems: why we need new models of accountability', Cambridge, UK, Cambridge University Press, 2006.

⁶⁷ Cashore, B., G. Auld and D. Newsom. 'Governing through markets: Forest certification and the emergence of non-state authority', New Haven, Yale University Press, 2004.

⁶⁸ Bernstein, S. and B. Cashore. 'Non-State Global Governance: Is Forest Certification a Legitimate Alternative to a Global Forest Convention?', New York, Ashgate Press, 2004

⁶⁹ Cashore, B., F. Gale, E. Meidinger and D. Newsom. 'Confronting sustainability: Forest certification in developing and transitioning countries', New Haven, CT, Yale School of Forestry and Environmental Studies Press, 2005.

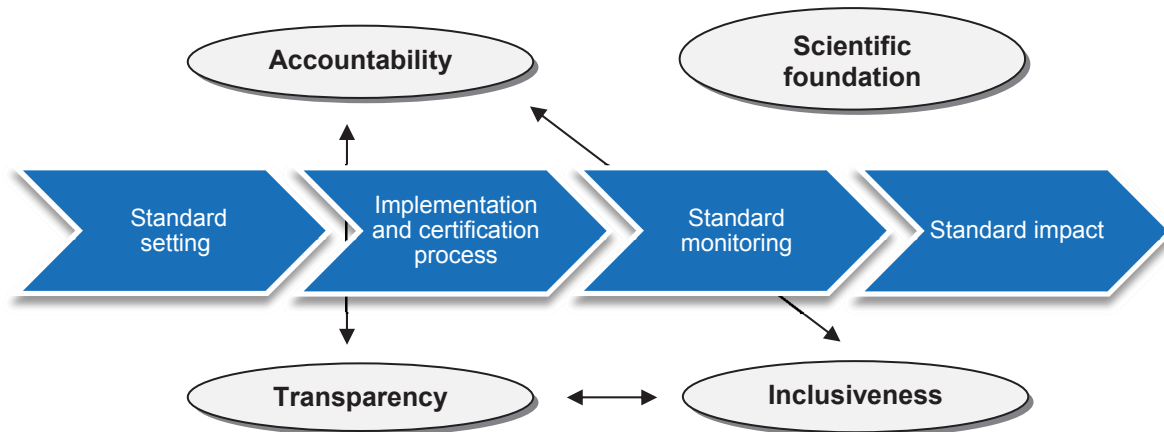
⁷⁰ Delmas, M. and O. Young. 'Governance for the Environment. New Perspectives', Cambridge, UK, Cambridge University Press, 2009.

⁷¹ Fuchs, D., A. Kalfagianni and T. Havinga. 'Actors in private food governance: the legitimacy of retail standards and multistakeholder initiatives with civil society participation', *Agriculture and Human Values*, 2009.

⁷² Ranville, M. 'Legitimacy of Private Governance: Private Food Safety Standards in the United States', Working paper series George Mason University, 2009.

⁷³ Wolf, K.D. 'Private Actors and the Legitimacy of Governance Beyond the State', unpublished paper prepared for the workshop 'Governance and Democratic Legitimacy', ECPR workshop Grenoble, 6-11 April 2001.

⁷⁴ Nadvi, K. and F. Waltring. 'Making sense of global standards', Cheltenham, Edward Elgar, 2003.

Figure 3. Elements of legitimacy

Source: Authors.

The ways in which public authorities engage with private standards can decisively influence the legitimacy of private standards, e.g. through their simple use of a standard.⁷⁵ Governments' behavior can go from facilitating national stakeholder dialogue on private standards, through public authorities incentivizing organizations to adhere to private standards, to public authorities incorporating private standards in statutes, regulations, permits or international agreements. These governmental actions can potentially work towards public and private standards' harmonization, complementarity or substitution (see chapter 8 and chapter 9). The next chapter provides an overview of the different roles that governments can take vis-à-vis private standards.

7. The roles for governments

Regulators have various options of attaining their policy goals. They can, for example, facilitate, incentivize, or force businesses to implement rules and procedures. Whatever roles governments decide to play, they might potentially influence the uptake of private standards and, as a consequence, the interplay of public and private standards. Thus, the actions taken by governments may lead towards public and private standards' harmonization, convergence, complementarity or conflict. It is therefore important to lay out the options available to public authorities in this chapter and their potential effects.

7.1. From enhancing awareness to enforcing compliance

Private standards bear a number of advantages for both, public authorities mandated to ensure food safety and a certain level of food quality and private companies seeking to conform to due diligence requirements and to gain competitive advantages.

At the same time there are also challenges connected to private standards such as their proliferation, or the strictness of their requirements. This raises the question of how governments could best use the advantages offered by private standards in facilitating and supporting their development, and tackle the challenges through harmonization and incorporating private standards in public policymaking.

In the literature different typologies of potential government engagement and involvement exist. Carey and Guttentstein (2009) describe three categories referring to governments as

- *Supporters* when they encourage suppliers to get certified to a private standard by providing financial incentives and technical assistance;

⁷⁵ Cashore, B., G. Auld and D. Newsom. 'Forest certification (eco-labeling) programs and their policy-making authority: explaining divergence among North American and European case studies', *Forest Policy and Economics*, 5, 3, 2003.

- *Facilitators* for governments providing resources to facilitate the development of a standard such as the East African Organic Products Standards (EAOPS) facilitated by governments of the East African Community; and
- *Users* for governments certifying their own operations, explicitly requiring products purchased or imported to be certified to a specific standard or to be compliant with a certain standard's criteria.

These categories are based on ten case studies of good practice examples where governments use standards to implement their policies.⁷⁶

In a summary of lessons learnt from six case studies, UNCTAD developed recommendations to national governments in developing countries about how to handle food safety and environmental requirements. Recommendations include stronger control of pesticide usage and training how to use them, promote production technologies for safe products, promote national GAP (Good Agricultural Practice) codes and benchmarking to international standards, among others. In a later report on the implementation of private sector standards for Good Agricultural Practices UNCTAD⁷⁷ (2009) suggests the following role for governments:

- Enhancing *awareness* among producers;
- Facilitating national stakeholder *dialogue*;
- Support in *training activities*;
- *Assurance of control* of key Good Agricultural Practices (GAP) requirements;
- Provide *infrastructure* facilitating and measuring *compliance*;
- Timely *dissemination of information* on new *legislation* in importing countries.

Alternatively, Cragg⁷⁸ distinguishes eight forms of engagement of public authorities with private environmental management systems providing an idea of the many ways in which the public and private spheres interact. The author distinguishes the following forms of engagement:

- *Steering*: public authorities try to influence the development, use or content of private standards;
- *Self-discipline*: public authorities subject themselves to private standards;
- *Knowledge production*: public authorities disseminate knowledge about the use or value of private standards;
- *Reward*: public authorities incentivize organizations to adhere to private standards;
- *Command*: public authorities require regulated entities to adhere to private standards;
- *Borrowing*: public authorities incorporate private standards in statutes, regulations, permits or international agreements;
- *Benchmarking*: a court or tribunal uses private standards as a benchmark for evaluating a party's conduct and determining its legal liability;
- *Challenge*: public authorities ask firms to adhere to private standards.

While the author bases this typology on work carried out on environmental management systems, it indicates the ways in which governments can get involved with private standards and how these standards might be used by public authorities.

Figure 4 relates the different forms of government engagement identified by Carey/Guttenstein, Cragg and UNCTAD to potential change in the perceived legitimacy of standards. While activities are not necessarily

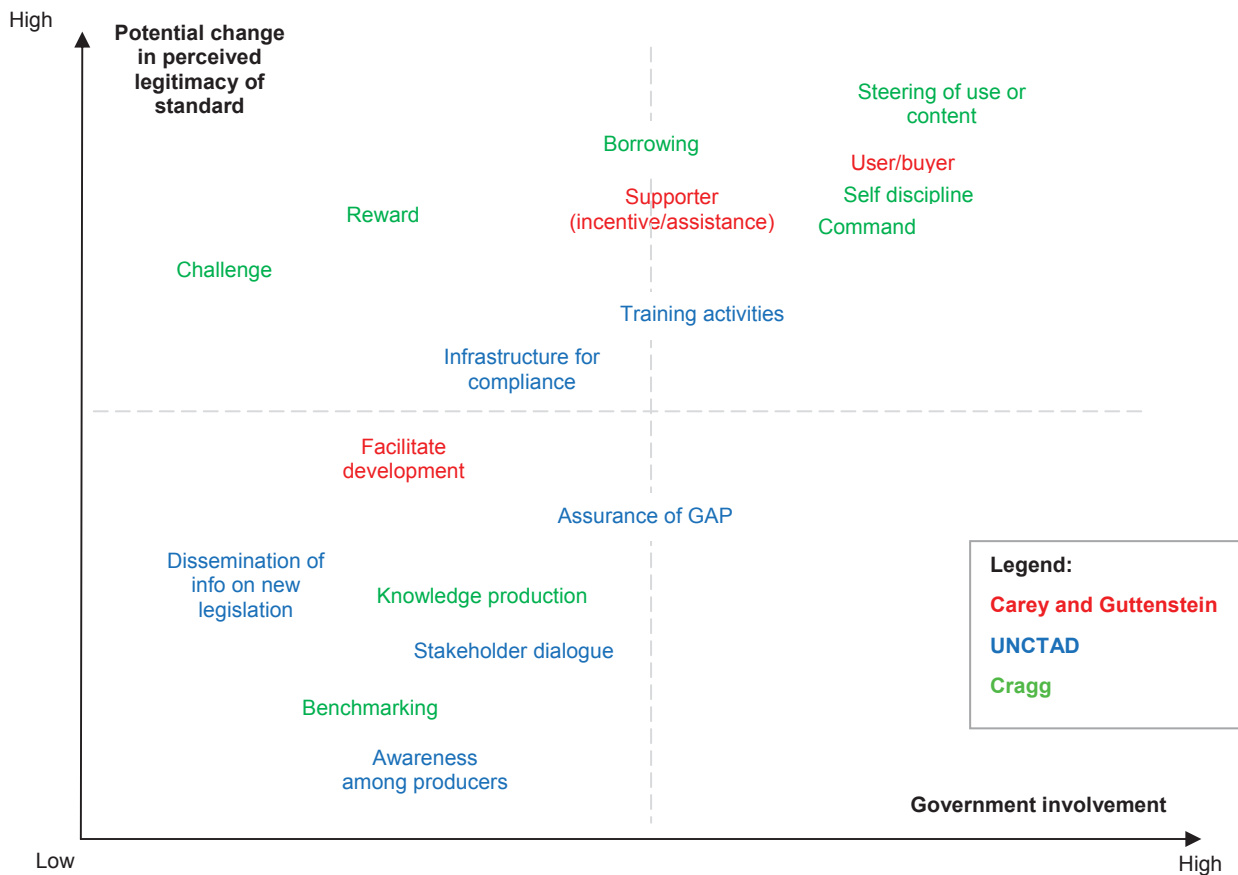
⁷⁶ Carey, C. and E. Guttenstein. 'Governmental use of voluntary standards: innovation in sustainable governance, R079, ISEAL Alliance, 2008.

⁷⁷ UNCTAD. 'The Implications of Private-Sector Standards for Good Agricultural Practices. Exploring Options to Facilitate Market Access for Developing-country Exporters of Fruit and Vegetables: Experiences of Argentina, Brazil and Costa Rica'. UNCTAD/DITC/TED/2007/2, 2007.

⁷⁸ Cragg, W. 'Three Questions about Corporate Codes: Problematizations, Authorizations and Public/Private Divide', Cheltenham UK, Edward Elgar, 2005.

aimed at increasing the legitimacy of standards, this might be a side effect of governmental activities. Therefore, this criterion seems to be a relevant dimension to synthesize and contrast the different forms of engagement in the following figure.⁷⁹

Figure 4. Governmental engagement and change in perceived legitimacy



Source: Authors.

Similarly to differentiating forms of governmental engagement, Cashore, Auld, Newsom⁸⁰ illustrate six ways for governments to influence standard organizations' behavior in general and policymaking processes more specifically. First, governments provide the legal and policy framework within which standard setters have to act by defining rules and policies. Second, the government might act as an interest group providing advice in writing specific rules. Third, governments influence market dynamics in defining procurement policies. Fourth, governments are owners of considerable parts of land and in complying with a standard the government would grant legitimacy to that standard. Fifth, governments might support producers/exporters in becoming certified. Lastly, governments can offer expertise and resources to standard organizations for the development of standards.

The roles governments can take in harnessing the opportunities provided by private standards and tackling related challenges are manifold and, undoubtedly, context specific. They also depend on what public authorities aim to achieve. This entails that there is no 'right' or 'wrong' way for governments to engage.

⁷⁹ Please note that the three studies mentioned do not suggest any impact of governmental activities on the perceived legitimacy of a standard. The studies are purely descriptive of governmental activities.

⁸⁰ Cashore, B., G. Auld and D. Newsom. 'Governing through markets: Forest certification and the emergence of non-state authority', New Haven, Yale University Press, 2004.

But it is important to understand that governments can strongly influence the legitimacy of private standards and the interplay between public and private standards by choosing a certain course of action.

7.1.1. Governmental engagement influences legitimacy

Legitimacy of private standards can depend on the course of action taken by a government. Indirectly, certain legitimacy is conceded to the standards concerned where governments decide to (i) support training activities for companies to enable compliance with a standard, (ii) disseminate knowledge about the use or value of private standards or (iii) encourage suppliers to get certified to a private standard by providing financial incentives and technical assistance. Yet, granting legitimacy can be done with varying degrees according to the specific role played by public authorities. For example, public authorities acknowledge a standard's legitimacy more directly by (i) certifying their own operations against a standard, (ii) explicitly requiring products purchased or imported to be certified or (iii) incorporating this standard in statutes, regulations, permits or international agreements.

Government policies can grant *external* legitimacy to a standard, compared to *internal* legitimacy which is based on the concepts of transparency, inclusiveness, accountability or scientific foundation, as described in chapter 6. The next section will provide some examples of where governments did engage in one or several of these ways.

7.2. Examples of governmental engagement

Governmental funding and support of private standards

While statements of intent cannot be evaluated as direct support for standards, statements issued by governments do have certain leverage in influencing stakeholder support and adoption of a standard. In 2009 the European Commission has adopted a communication⁸¹ on Fairtrade and 'non-governmental trade-related sustainability assurance schemes'. This communication recognizes the contribution Fairtrade and other standards can make to sustainable development. It also emphasizes that the European Commission will 'continue funding relevant Fair Trade and other sustainable trade related activities'. The European Commission also emphasized the importance of 'maintaining the non-governmental nature of Fair Trade and other similar sustainability schemes throughout the EU'. It also 'intends to explore the scope for further dialogue, co-operation and, where appropriate, convergence between different private labeling schemes to promote possible synergies and enhance clarity for the consumer'. Similarly, several governments fund standard setting organizations directly or indirectly through their respective institutions for development cooperation. This financial support awards certain legitimacy to these standards.

Geographic Indications (GIs) are seen as a tool to: (i) foster the development of the local economy (including small farmers), (ii) offer a quality guarantee to consumers, (iii) provide opportunities for value added agriculture, and (iv) protect the local environmental and cultural resources. A key advantage of GIs is that they may be implemented in developing as well as in industrialized countries. An important precondition, however, for GIs to be successfully implemented is the provision of an appropriate institutional and political framework in the respective country.⁸²

As Bowen describes for the case of the GI for tequila in Mexico,⁸³ this can represent a challenge. According to the author, the main challenges pertain to: (i) the state's need to provide a framework for a transparent negotiation process between stakeholder and a clear definition of quality standards, (ii) ensuring the representation of small farmers and supporting these farmers to be able to organize. Similarly, in a further paper⁸⁴ Bowen and Zapata describe the importance of protecting traditional cultivation techniques and local

⁸¹ European Commission. 'Contributing to Sustainable Development: The role of Fair Trade and nongovernmental trade-related sustainability assurance schemes', COM(2009) 215 final, 2009.

⁸² Bowen, S. 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy', *Rural Sociology*, 75, 2, 2010.

⁸³ Bowen, S. 'Development from Within? The Potential for Geographical Indications in the Global South', *The Journal of World Intellectual Property*, 13, 2, 2010.

⁸⁴ Bowen, S. and A. Valenzuela Zapata. 'Geographical Indications, "Terroir", and Socioeconomic and Ecological Sustainability: The Case of Tequila', *Journal of Rural Studies*, 25, 11, 2009.

(often small) farmer knowledge in GI norms. This is important in ensuring positive effects of GI on the local economy and on the environment. Finally, producers need to find a compromise between adjusting products to new markets and new consumers' taste buds, and keeping the specificity and authenticity of the product. Ilbert and Petit⁸⁵ describe some of these challenges faced by developing countries in protecting GIs as intellectual property rights. The authors also provide examples where GIs have been successfully used as trademarks on international markets, e.g. 'Café de Colombia'. In this case, governmental support was pivotal in registering the 'Coffee of Colombia' trademark and the certification mark 'Colombian' to access Canadian and United States markets (these countries only accept trademarks or certification marks) and in having the European Union recognized the GI 'Café de Colombia' to access the European market.

In a comprehensive guide⁸⁶ on Geographical Origin and Geographical Indications, the FAO emphasizes the importance of public and private cooperation in developing a Geographical Indication product system. While the local producers, processors and other value chain actors define the rules for using the GI (in a Code of Practice), the public sector's main responsibility lies in providing the legal framework for the recognition and protection of GIs. Beyond this, the FAO points out the roles for international, regional and local public institutions as:

- Informing and sensitizing stakeholders about the nature of GI products and their potential for rural development and providing legal tools and an institutional framework to protect the reputation of these products.
- Supporting a participatory process in elaborating rules and codes of practice and information on national procedures for the official recognition/protection of GIs.
- Enforcement of legal protection, nationally and worldwide and information to consumers on the nature of GIs and support for communication tools.
- Providing support for assessing the impacts of GI systems.

With this framework provided, producers, processors and other value chain actors can work on the definition of the product, the delimitation of the area and the guarantee system. Given their geographical proximity, *local authorities* are particularly responsible for (i) ensuring a balanced representation of stakeholders in decision making process, (ii) regulating the definition process of the GI, (iii) considering local environmental conditions and (iv) providing capacity-building to encourage GI product market development.

The FAO guide outlines the tasks to be carried out by the private actors involved and the policy tools available to public authorities according to their policy aim. Although roles are clearly distinguished, public and private activities are strongly interrelated. This guide also provides a wealth of examples how public authorities can create a functional GI system.⁸⁷

Governmental leverage through public procurement

Governments do play an important role as buyers of products and services in general and, increasingly so, of those complying with social and environmental standards. The OECD estimated a weighted average of 20% of GDP spent on public purchasing in OECD member countries between 1990 and 1997⁸⁸. The European Commission estimates public procurement at roughly €2,500 billion accounting for 16% of Europe's gross domestic product GDP.⁸⁹ This magnitude offers a huge opportunity, but it also imposes a certain responsibility on public purchasing. While the only agreement covering government procurement

⁸⁵ Ilbert, H. and M. Petit. 'Are Geographical Indications a Valid Property Right? Global Trends and Challenges', *Development Policy Review*, 27, 5, 2009.

⁸⁶ FAO. 'Linking people, places and products. A guide for promoting quality linked to geographical origin and Sustainable Geographical Indicators'. 2010.

⁸⁷ Also refer to ITC's guide on Geographical Indications: ITC (2009) 'Guide to Geographic Indications. Linking Products and their Origins.' This guide provides an overview of GI definitions and concepts, their advantages and challenges, an overview of legal protection systems of GIs, different policies and regulatory systems, how to apply for GI protection, and key points to consider when developing a GI.

⁸⁸ Carey, C. and E. Guttenstein. 'Governmental use of voluntary standards: innovation in sustainable governance, R079, ISEAL Alliance, 2008.

⁸⁹ Significant and Ecofys PWC. 'Collection of statistical information on Green Public Procurement in the EU', Available at: http://ec.europa.eu/environment/gpp/pdf/statistical_information.pdf, accessed on 25 May 2010. 2009.

issues on WTO level (Agreement on Government Procurement, 1996) states 'the need to act in accordance with the principle of sustainable development', the UN Agenda 21 adopted in 1992 and The Plan of Implementation reaffirmed in 2002 at the World Summit on Sustainable Development more directly encourage governments to address environmental and social concerns in procurement procedures.

The European Commission adopted a 'Sustainable Development Strategy' in 2001 and laid the legal basis for the inclusion of environmental and social consideration in procurement in 2004.⁹⁰ Following the 2004 'Buying Green Handbook',⁹¹ in 2011 the European Commission published a guide for contracting authorities that aims to raise awareness of the potential benefits of socially responsible public procurement and explaining opportunities offered by the EU legal framework to take into account social considerations in public procurement.⁹²

Public authorities asking for compliance with private standards

In 2004 the National Council for Protected Areas (CONAP) in Guatemala administering the protected Maya Biosphere Reserve (MBR) decided to ask communities and industrial groups obtaining forest concessions in the MBR to be FSC certified.⁹³ Another example relates to the Dutch Government, which has been one of the first governments to formally introduce sustainability conditions in its purchasing procedures, pursuing a target of 100% sustainable purchasing on federal level by 2010.⁹⁴ The EU as a whole has also indicated a move towards increased sustainable purchasing, targeting 50% of 'Green Public Procurement' (GPP) for each member state for the same year.⁹⁵

But the use of voluntary standards and their reference in public purchasing has also created conflicts. The 'Groningen Case' is an example where a supplier, Douwe Egberts/Sara Lee, felt discriminated by tender specifications laid out by the Province of Groningen in the Netherlands explicitly requiring Fairtrade certification. Following the replacement of the reference to this certification with the statement of FLO Fairtrade principles in tender documents, the District Court ruled in favor of the Province arguing that some 20 suppliers potentially met the requirements and therefore tender specifications were not discriminatory.

Obviously, referencing a specific private standard or its requirements in public tenders awards absolute legitimacy to this standard. This fact has resulted in highly controversial discussions, as public authorities grant legitimacy to private standards that are not always transparent or inclusive and whose impacts are still not entirely clear.

Public authorities referring to private standards in regulations

Generally, public authorities can enhance complementarities of standards in facilitating national stakeholder dialogue, disseminating information on new legislation in importing countries, or asking firms to adhere to private standards while accepting them as equivalent to the respective public one.

In fact, there are some examples of complementarities among public and private standards. Private standards are used to facilitate compliance with mandatory standards or to demonstrate compliance, e.g. using the HACCP standard to demonstrate that legal obligations regarding 'due diligence' requirements are met for food products. Consequently, many private standards are based on existing public standards and either reflect some of their provisions or directly adopt requirements, e.g. on food safety and hygiene

⁹⁰ The legal basis for public procurement in the European Union is provided by two Directives, namely 2004/17/EC and 2004/18/EC. The Directives provide some scope for social considerations provided that certain conditions are adhered to.

⁹¹ European Commission. 'Buying Green! A Handbook on environmental public procurement', Office for Official Publications of the European Communities, 2004.

⁹² European Commission. 'Buying Social: A guide to taking account of social considerations in public procurement', Luxembourg, Luxembourg: Publications Office of the European Union, 2011.

⁹³ Carrera, F *et al.* 'Forest Certification in Guatemala', *Forest Certification in Developing and Transitioning Societies: Social, Economic, and Ecological Effects. Symposium, 10-11 June 2004*, Yale School of Forestry and Environmental Studies, New Haven, Connecticut, United States of America, 2004.

⁹⁴ Carey, C. and E. Guttenstein. 'Governmental use of voluntary standards: innovation in sustainable governance', R079, ISEAL Alliance, 2008.

⁹⁵ Significant and Ecofys PWC. 'Collection of statistical information on Green Public Procurement in the EU', Available at: http://ec.europa.eu/environment/gpp/pdf/statistical_information.pdf, accessed on 25 May 2010. 2009.

requirements.⁹⁶ This is particularly the case in regulating food safety and quality since the EU food hygiene regulations from 1 January 2006. As described in section 5.2 private standards are increasingly taking responsibility for ensuring food safety and quality and the role of governments shifted from finished product inspection to examining of safety and quality systems implemented by firms. Smith⁹⁷ describes it as follows: 'This represents a shift from a largely prescriptive control approach towards an enforced self-regulatory approach with the regulator imposing a requirement on food businesses to determine and implement their own internal rules and procedures to fulfill the regulators policy objectives. The regulator is then responsible for approving these internalized rules and for monitoring compliance.' Codron⁹⁸ cites the example of the French system of quality standards applied to importers of fruit and vegetables as a best practice example of cooperation between public and private actors in standards procedures. Garcia Martinez *et al.*⁹⁹ argue that the potential is considerable for more co-regulation of public and private partners.

This is the example of an intergovernmental organization (WTO) borrowing requirements from the Codex Alimentarius standards for its regulations and benchmarking its members' actions. Food safety and quality rules in international trade are governed by SPS and TBT agreements of the WTO. The SPS agreement refers to the benchmark for food quality and safety set by the Codex Alimentarius Commission. The WTO also uses these guidelines to assess trade restrictions. At the same time, individual countries keep developing national food standards complicating the harmonization of national standards with Codex Alimentarius standards pivotal for facilitating international trade. Where official national standards are more stringent than the respective Codex Alimentarius standards, this must be justified scientifically.

The SPS Agreement lays out the basic rules for the application of food safety and agricultural health measures. It demands regulators to base measures on scientific risk assessment, emphasizes that different measure can lead to equivalent safety outcomes and allows for imports from different regions in an exporting country if the absence or low incidence of pests and diseases is evident. The Agreement also encourages the adoption of measures based on international standards referencing explicitly Codex Alimentarius, World Organization for Animal Health standards (OIE) and the International Plant Protection Convention (IPPC).

Another example in this category pertains to Geographical Indications and traditional processes. Both have been developed as private standards and were later adopted by government as public voluntary standards as defined by Henson/Humphrey.¹⁰⁰ Examples include quality labels based on Protected Geographical Indications (PGI), Protected Designation of Origin (PDO) and Traditional Specialty Guaranteed (TSG). Public authorities grant the respective public label if inspection, control and certification is made by an independent third party institution that is accredited by the public regulator. This cooperation ensures credibility of the label and does not burden public authorities in developing the respective standard.¹⁰¹ Meidinger¹⁰² summarizes the advantages and disadvantages of this approach: public authorities can use global, state-of-the-art standards to achieve environmental goals; the administrative burden can be placed on the standards organizations; and only a small part of the costs need to be borne by the state. Disadvantages include a reduction of government control over regulatory policy and additional costs to enterprises.

⁹⁶ Codron, J.-M. and E. Rouviere. 'From public to private safety regulation? The case of negotiated agreements in the French fresh produce import industry', *International Journal of Agricultural Resources*, 6, 3, 2007.

⁹⁷ Smith, G. 'Interaction of Public and Private Standards in the Food Chain', OECD Food, Agriculture and Fisheries Working Papers 2009.

⁹⁸ Codron, J.-M. and E. Rouviere. 'From public to private safety regulation? The case of negotiated agreements in the French fresh produce import industry', *International Journal of Agricultural Resources*, 6, 3, 2007.

⁹⁹ Martinez, M.G., A. Fearne, J.A. Caswell and S. Henson. 'Co-regulation as a possible model for food safety governance: Opportunities for public-private partnerships', *Food Policy*, 32, 3, 2007.

¹⁰⁰ Henson, S. and J. Humphrey. 'Understanding the Complexities of Private Standards in Global Agri-food Chains as they Impact Developing Countries' *Journal of Development Studies*, 49, 9, 2010.

¹⁰¹ Young, L. and J. Hobbs. 'Vertical Linkages in Agri-Food Supply Chains: Changing Roles for Producers, Commodity Groups, and Government Policy', *Review of Agricultural Economics*, 24, 2, 2002.

¹⁰² Meidinger, E. 'Environmental Certification Programs and U.S. Environmental Law: Closer Than You May Think', Environmental Law Institute, Washington, 2001.

Some public standards also directly reference private standards in their provisions. This not only increases their acceptance but also their legitimacy. Some examples include Bolivia, where third-party sustainable forest management certification, e.g. FSC, is accepted as equivalent to a governmental audit that forest concession holders have to undergo every five years. Israel, for example, exclusively imports MAC certified specimens of live marine ornamentals. Importers have to sign the MAC Statement of Commitment and make every effort to become MAC Certified. These examples have been generated in the course of a project called 'Governmental Use of Voluntary Standards' by the ISEAL Alliance and the Trade Standards Practitioners Network (TSPN) that reports on ten cases where governments and public authorities use voluntary standards to achieve their public policy objectives. A report¹⁰³ synthesizes these examples.

Also, the Dutch government recently decided to integrate the SA8000 standard developed by Social Accountability International (SAI) into the social criteria for public procurement of the Dutch government across all products. The standard focuses on requirements on labor conditions and human rights in workplaces with coverage across industries and locations.¹⁰⁴

Although there are a number of examples where public and private standards show some complementarities and harmonization is being promoted by the WTO and several other initiatives, these examples remain highlights and have not yet been successful in reducing the number of standards firms need to comply with.

8. The status quo of harmonizing standards

Why is harmonization of standards so important? Harmonization of standards is important because potential gains to be realized are immense. According to one estimate, about one third of global trade goods is affected by standards and 'the boost in trade from the complete international harmonization of product standards would be equivalent to the reduction of tariffs by several percentage points.'¹⁰⁵

For example, harmonized public standards make trade more efficient as exporters could comply with globally accepted standards instead of complying with different standards for each target market. Hence, export opportunities would multiply also benefiting consumers from an increased choice of – probably cheaper – products and services. Agreed upon international standards increase trade and exports, both having positive welfare impacts. The multitude of private standards creates inefficiencies in the standard system as a whole. Inefficiencies occur when market participants need to comply with several (private and/or public) standards resulting in duplication of compliance costs. These costs range from costs related to requirements on documentation to a change in management and production practices and certification and audit costs.¹⁰⁶ Put simply, more strict and less harmonized requirements are more difficult and more costly to comply with. Agreed upon international standards increase trade and exports, both having positive welfare impacts.

Harmonization is not only important among public and private standards but also between public and private standards. Companies have to comply with both, public and private standards and the amount and stringency of both are steadily increasing. First, this excludes many companies from participating in international trade and, second, it makes compliance to these standards a costly endeavor in terms of human, financial and technical resources. Thus, it is necessary to facilitate trade through more efficient compliance with fewer standards. Ideally, private standards facilitate the implementation of public standards and conversely, public standards provide a baseline for meeting private standards.

The following chapter discusses the main developments and the status quo of harmonization among public and private standards and between public and private standards.

¹⁰³ Carey, C. and E. Guttentstein. 'Governmental use of voluntary standards: innovation in sustainable governance, R079, ISEAL Alliance, 2008.

¹⁰⁴ Please see: <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1157> accessed on 22 November 2011.

¹⁰⁵ Büthe, T. and M. Walter. 'The New Global Rulers: The Privatization of Regulation in the World Economy', Princeton, Princeton University Press, 2011.

¹⁰⁶ Valceschini, E., L. Saulais and S. Barrey. 'Articulation Entre Réglementation, Normalisation et Référentiels Privés dans Les Industries Agroalimentaires, Rapport final d'une étude financée par le Ministère de l'Agriculture et de la Pêche- Direction des Politiques Économique et Internationale', MAP 05 D1 05 01, 2005'.

8.1. Advancing harmonization of public standards

Given the potential for increased efficiency in international trade and positive welfare impacts, governments are pushing for multilateral coordination of regulation. An important step to more harmonized public food regulation has been taken by the WTO in adopting the Agreements on Sanitary and Phytosanitary (SPS) measures and on Technical Barriers to Trade (TBT).

These Agreements establish rules on the application of standards by member countries and aim to minimize the trade distorting effects of food standards. They also lead countries to pay attention to trade impacts of regulations adopted as they have been assigned formal responsibility to do so. The SPS Agreement also defines procedures for the resolution of disagreements when it comes to setting of food standards.¹⁰⁷ New standards or technical regulations developed by WTO members need to be notified prior to their implementation under the terms of the SPS and TBT Agreements.

Harmonization of standards is an important objective for several reasons. Countries compliant with international standards referred to in the SPS Agreement, such as CAC, OIE and IPPC, are automatically considered to be in compliance with the SPS Agreement. This means that if WTO members comply with these standards and respective guidelines, the compliance with the SPS Agreement is greatly facilitated. This marks a leap to market access for exporters.

Another important step towards harmonization of global food standards has been taken with the development of the Codex Alimentarius, setting a benchmark for international food quality and safety standards. It is also used by the WTO as a guideline to evaluate whether national standards are trade restrictive. Additionally, the United Nations Economic Commission for Europe (UNECE) has developed a set of standards used as a basis for quality standards and grades. The Organisation for Economic Co-operation and Development (OECD) provides international standards for seeds, forestry reproduction material and fruit and vegetables.

Although harmonization of public standards has advanced considerably in the past decade, national governments keep developing public standards that are not based on international standards. The amount of notifications that WTO members have to make in such a case provides an indication of this development.¹⁰⁸

Some of the reasons for the continuous development of non-harmonized standards are based on differences between countries. These, in turn, are reflected in national standards. The main differences include levels of industrialization, national capacity to conduct the necessary tests to be compliant, economic development, and national cultures and values. Differing national frameworks result in heterogeneous public regulations, which, if not adapted to SPS and TBT agreements, may hinder international trade. Another risk in national standard setting is favoritism of domestic producers over imports by stipulating very specific production and processing methods. These may represent non-tariff measures that hinder trade and have negative global welfare effects.¹⁰⁹

Henson/Jaffee¹¹⁰ develop strategic options that producing countries can take when confronted with new food safety standards. They differentiate the options:

- *Exit*: leave markets with specific food safety standards;
- *Loyalty*: comply with food safety standards and
- *Voice*: participate in standard creation or complain when an alternative or viable standard already exists.

¹⁰⁷ Caswell, J.A., and S. Henson. 'Interaction of Private and Public Food Quality Control Systems in Global Markets', Reading, UK, University of Reading, 1999.

¹⁰⁸ World Trade Organization. 'Overview regarding the level of implementation of the transparency provisions of the SPS agreement', *Committee on Sanitary and Phytosanitary Measures*, G/SPS/GEN/804/Rev.4, 2011.

¹⁰⁹ World Trade Organization. 'Effects of SPS-related private standards - Descriptive report', 2009.

¹¹⁰ Henson, S. and S. Jaffee. 'Understanding Developing Country Strategic Responses to the Enhancement of Food Safety Standards', *The World Economy*, 31, 1, 2008.

Whether the different options are available and feasible depends on the situation of the producer/exporter, the legal framework, food safety control infrastructure, and institutional capacities. The authors provide examples of the strategies adopted, including fish and fishery product export from India and Kenya and horticultural products from Kenya. This contribution points towards the 'room for maneuver' for producing countries given that capacities and resources allow doing so.

A USAID report suggest governments to fill this 'room for maneuver' in, firstly, facilitating the development and expansion of public (or public/private) standards for food and agricultural products for both domestic and export markets. Sound national public standards not only improve domestic food safety and quality, but they are key to building an international reputation of the exporting nation. Secondly, Developing nation governments need to provide the institutional infrastructure necessary to assist and protect their nationals operating in international food markets. The report cites the example of Guatemala where the installation of consular officers at major ports of importation that assist in disputes over the quality of fresh produce. Since, complaints of poor quality have significantly declined.¹¹¹

Another issue debated at WTO is the one of Geographical Indications (GIs). Protection of GIs occurs in the country of production and marketing of the product, as there is no international commercial law to protect GIs. Accordingly, GIs whether they come as marks, appellations, or designations need to be registered in each country separately. The International Trade Centre¹¹² estimates that there are 110 countries, including the 27 Member States of the European Union (EU), with specific GI laws in place. Approaches to harmonize protection of GIs have been initiated within the TRIPS Agreement which protects intellectual property, and GIs, particularly for wines and spirits and at a lower level for other products. In addition, several international agreements aimed at creating a common registry to recognize and protect GIs, with the Lisbon Agreement being the most widely accepted accord although only 26 countries participate in it. There is strong agreement about the need for a common international registration of GIs.¹¹³ The WTO TRIPS Council under the Doha mandate is working to develop a multilateral system of notification and registration of geographical indications for wines and spirits and aims to extend the higher level of protection to other products. A complete text proposing this register has been drafted and is under negotiation.¹¹⁴

Finally, the Standards and Trade Development Facility (STDF) supports developing countries in implementing international SPS standards. Among others, its strategic aim is to 'assist developing countries enhance their expertise and capacity to analyze and to implement international SPS standards, improving their human, animal and plant health situation, and thus ability to gain and maintain market access'.¹¹⁵

8.2. Challenges remaining in private standards harmonization

As alluded to in chapter 5, harmonization of private food safety and quality standards is more advanced than harmonization of social and environmental standards. While critics claim that private food safety standards establish another layer of governance and undermine harmonization, some coalitions and internationally accepted standards such as ISO 22000 drive the process of harmonization and equivalence.¹¹⁶ Examples include the BRC Global Standard for food safety in the United Kingdom or the GFSI at the global level. The objective of the GFSI is to foster the convergence between food safety standards through an ongoing benchmarking process for food safety management schemes. As of June 2010, GFSI benchmarked and recognized 13 schemes, including BRC, the International Food Standard (IFS), Safe Quality Food standards (SQF) and Global GAP, among others. This means that these standards are considered as equivalent and suppliers need to be compliant with only one of these standards.

¹¹¹ USAID. 'The relationship of third party certification (TPC) to Sanitary and Phytosanitary (SPS) measures and the international agri-trade: Final Report', Washington, 2005.

¹¹² ITC. 'Guide to Geographic Indications. Linking Products and their Origins', ITC/P228.E/DMD/SC/09-II, Geneva, 2009.

¹¹³ Josling, T. 'The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict', *Journal of Agricultural Economics*, 57, 3, 2006.

¹¹⁴ Please see: http://www.wto.org/english/tratop_e/trips_e/gi_e.htm accessed on 22 November 2011.

¹¹⁵ STDF website: <http://www.standardsfacility.org/en/AUWhatWeDo.htm>, accessed on 22 July 2011.

¹¹⁶ FAO/WHO Codex Alimentarius Commission. 'Consideration of the impact of private standards', Rome, 2010.

Harmonization through benchmarking and mutual recognition of standards is an important strategy in fighting potential barriers to trade. Such harmonization of standards could be brought forward by intergovernmental treaties, but it seems more realistic and efficient that coalitions of firms and industry consortia take the lead. Harmonization has also been supported by the development of 'meta systems' such as hazard analysis critical control point (HACCP) procedures, good manufacturing practice (GMP), Good Agricultural Practice (GAP) and traceability systems. Compliance with these systems is a precondition to participating in the global trade in agricultural food.¹¹⁷ A number of standards incorporate these 'meta systems', such as the food safety management system ISO 22000 and ISO 9000 developed by the International Organization for Standardization (ISO), the SQF standard or Tesco Nature's Choice, that have been developed by individual firms.¹¹⁸

Nevertheless, harmonization does not always make sense, for example when standards have different objectives. The United Nations Conference on Trade and Development (UNCTAD) compared the EU Organic Agriculture Standard¹¹⁹ and the GLOBALG.A.P. standards applicable to Fruits and Vegetables. The study finds considerable differences between the two standard systems when it comes to their focus (more general standards vs. focus on pesticide residues and contamination), objectives (ensure food safety vs. apply organic production methods) and methods of implementation (documented evidence proofing ability and knowledge vs. requirements met yes/no). Similarities were found in the systems of certification. Lee¹²⁰ also compares EUREPGAP (now: GLOBALG.A.P.) control points for fruit and vegetables standards with the Organic standard.

Prominent initiatives working towards the harmonization of standards include the International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF), the Joint Initiative on Corporate Accountability and Workers' Rights (JO-IN), the ISEAL Alliance, and in sustainable tourism the Global Sustainable Tourism Council (GSTC). These initiatives have been labeled 'meta governance' initiatives defined as the 'organization of self-organization'. Derkx¹²¹ offers a detailed analysis of these four initiatives. According to Derkx, 'meta governance' initiatives work to 'enhance the efficiency and effectiveness with which standards initiatives can bring about the implementation of their standards in targeted supply chains', and towards 'convergence of goals and priorities'. These initiatives, mainly the ISEAL Alliance, also look to increase legitimacy of private standards and enhance the effectiveness of their impacts. Nevertheless, Derkx finds a 'mixed picture' when it comes to the actual impacts of these initiatives. As most important impacts he identifies (i) the production of guidelines for developing consensus standards, and (ii) creating enhanced relationships, trust, and understanding among their participants, which he sees as 'laying the groundwork for future convergence'.¹²²

8.3. The progress made in harmonizing public and private standards

Harmonization of public and private standards is central to overcome trade restricting non-tariff barriers and to facilitate trade through more efficient compliance with fewer standards. Ideally, public and private standards build on each other's provisions and are as similar as possible in requirements and implementation procedures.

An example of public and private harmonization is the case of Kenya GAP where a country decided to develop voluntary national standards equivalent with a private food standard, the GLOBALG.A.P. standards for Fruits and Vegetables.¹²³ This approach has been an effective measure to make the implementation of an international standard more feasible within a national context. It is an example of the

¹¹⁷ Henson, S. and T. Reardon. 'Private agri-food standards: Implications for food policy and the agri-food system', *Food Policy*, 30, 3, 2005.

¹¹⁸ Jaffee, S., Henson, S. and L. Rios Diaz. 'Making the grade: Smallholder Farmers, Emerging Standards, and Development Assistance Programs in Africa'. A Research Program Synthesis, 2011.

¹¹⁹ Primarily two regulations have been taken into consideration: Council Regulation (EC) No 834/2007 and Commission Regulation (EC) No 889/2008.

¹²⁰ Lee, G.C.-H. 'Private Food Standards and their Impacts on Developing Countries', 2007.

¹²¹ Derkx, B.W. 'Metagovernance in the Realm of Private Sustainability Standards Setting', 2011.

¹²² Derkx, B.W. 'Metagovernance in the Realm of Private Sustainability Standards Setting', 2011.

¹²³ Henson, S and J. Humphrey. 'The Impacts of Private Food Safety Standards on the Food Chain and on Public Standard-Setting Processes', 2009.

harmonization of good agricultural practices (GAP) and food safety programs being recognized in Europe and the United States of America (USGAP). A number of other countries have locally adapted GAP schemes, e.g. Mexico and Chile and about a dozen of further countries seek recognition of their national standard. In countries where such an approach has been implemented private and public cooperation was pivotal to the successful development of a national equivalent standard. Mutual recognition of national standards among developing countries in the same region could also enhance South-South trade.¹²⁴ Moustier and Anh offer an insight into how quality food chains are being promoted in Vietnam, including the development of VietGAP based on HACCP principles.¹²⁵

IFOAM together with FAO and UNCTAD is promoting equivalence of the different organic standards.¹²⁶ The organizations aim to alleviate barriers to trade and facilitate market access of organic products. IFOAM is an institution that promotes organic agriculture. It was established to harmonize standards developed by private sector bodies. IFOAM develops minimum standards that allow certification programmes to develop their own locally adjusted standard. These basic standards also served strongly influenced the development of national organic standards throughout the EU and Codex Alimentarius Guidelines.¹²⁷

IFOAM already endorsed 48 organic standards worldwide as equivalent to IFOAM 'Common Objectives and Requirements of Organic Standards', which have also been endorsed by FAO and UNCTAD. This provides an international reference for global equivalence of organic standards and prevents the need for unilateral or bilateral equivalence, as both, private standards and government regulations are admissible. This benchmarking work is an important contribution to the global harmonization of standards. The case of Australia shows the significant benefits of harmonized standards: products certified according to a benchmarked standard by IFOAM can be exported to Australia without additional certification. This considerably facilitates trade of organic products with Australia. IFOAM expects more governments to follow this example and private standards to push for mutual recognition on this basis provided by IFOAM.¹²⁸

According to a survey carried out by OIE among its member countries, 89% of respondents from developed countries responded that 'private standards and certification can be a useful aid to the implementation of official standards'. Agreement to this statement from developing country respondents was lower with 53%.¹²⁹ For example, Anders Hildeman, Global Forestry Manager at IKEA, stated that although European Commission (EC) regulation does not explicitly mention FSC, this standards will be 'an important tool to meet the due diligence requirements of the EU timber regulation (...) PEFC can also provide reassurance towards legal requirements'.¹³⁰ In parallel, FSC is reviewing its FSC Controlled Wood standard. This minor review resulted from aligning this standard with EU Timber Regulation, the US Lacey Act and the EU Forest Law Enforcement, Governance and Trade Action Plan (FLEGT).

The collaboration between ISO and Codex Alimentarius Commission is another example of close private-public cooperation in standard setting. The two bodies work closely in technical committees, have mutual observer status and cooperate on the national level with Codex structures and national institutions

¹²⁴ Villalobos P. and P. Santocoloma 'Chile's experience with implementing a national GAP benchmarked to EUREPGAP'. Presentation made at the Subregional Stakeholder Consultation on Issues in Benchmarking National Codes on Good Agricultural Practice for Horticultural Products to EUREPGAP, 2005.

¹²⁵ Moustier P. and D. The Anh. 'Promoting information and cooperation: Farmers organisations and quality chains in Vietnam, *Perspective* 5, 2010.

¹²⁶ FAO, IFOAM and UNCTAD created the International Task Force on Harmonisation and Equivalence in Organic Agriculture. The Task Force is a platform for dialogue between public and private institutions (intergovernmental, governmental and civil society) involved in trade and regulatory activities in the organic agriculture sector. The objective is to facilitate international trade and access of developing countries to international markets.

¹²⁷ Barrett, H.R., A.W. Browne, P.J.C. Harris and K. Cadoret. 'Organic certification and the UK market: organic imports from developing countries', *Food Policy*, 27, 4, 2002.

¹²⁸ Please see: http://www.ifoam.org/about_ifoam/standards/family_of_standards/family_of_standards.html accessed on 21 November 2011.

¹²⁹ Food and Agriculture Organization (FAO). 'Draft report on a global survey on private standards, codes of conduct and guidelines in the livestock sector'. Working document. Rome, 2010.

¹³⁰ For the interview please see: <http://www.isealliance.org/news/spotlight-on-ikea-commitments-to-and-challenges-of-responsible-procurement> accessed on 22 November 2011.

participating in ISO.¹³¹ ISO and CAC ensure coordination and coherence in standard setting activities. Codex texts include numerous references to ISO standards. The TBT agreement also refers to ISO standards and countries refer to ISO standards either as voluntary or as mandatory national standards. Ideally, Codex Codes of Practice (e.g. Good Hygienic Practices or Good Manufacturing Practices) are integrated in national regulations and/or used as a basis for the development of codex consistent national codes (adapted to the national context).¹³²

How well standard harmonization works when there is an institution (FAO/WHO) that is accepted as legitimate can be observed with the harmonization of food safety standards. A lot of collective food safety standards are based on recommendations of the Codex Alimentarius Commission. This also facilitated the convergence between food safety standards in the GFSI, as described above. In fact, most standards for food safety and quality are based on voluntary public standards such as: HACCP, GMP, GAP (which build the base for the ISO 9000 standard) and private standards such as SQF 2000 or SA 8000.¹³³

McDermott *et al.*¹³⁴ compare private forestry certification standards with public policy differences across 47 jurisdictions worldwide. One of their verified hypotheses is: the level of prescriptiveness and threshold requirements in private certification standards vary in proportion to underlying government requirements. This means that in the case of less stringent government regulation, the requirements in a private standard also tend to be less stringent. The same relation is observed for more rigid government policies, implying that private standards only diverge to a certain degree from public regulation. The authors assume that private standards have to stay within certain limits of prescriptiveness so as not to lose the support of forestry firms. Gale¹³⁵ argues that the FSC standard as a 'sectoral polity' complements public rules relating to forestry. It also competes with national rule making authority. The authors suggest that, with FSC being a 'global polity' and providing a definition of environmentally appropriate, socially beneficial and economically viable forest management, the state should devolve rule making authority in this area to 'global agencies' such as the FSC. The state would save a lot of money and should take the role of providing incentives for companies to become FSC certified. Gale sees similar potential in other sectors such as fisheries, mining, tourism, coffee or sugar.

In contrast, an FAO paper¹³⁶ on certification of fisheries and aquaculture argues that private standards do not necessarily facilitate the implementation of public standards, but conversely, public standards often provide a useful baseline in meeting private (food safety) standards. Taking the example of fisheries certified to an 'eco labeling standard', operators certified to a private standard are mainly those that already comply with food safety management systems. It remains unclear whether private certification facilitates better food safety management. But it seems evident that buyers do prefer certified producers mainly because of the traceability aspects of private standards.

Another important means for harmonization is the provision of analytical frameworks that accommodate the complexity of private standards and policy approaches and allow for their consistent comparison. McDermott *et al.*,¹³⁷ for example, offer an analytical framework for comparing certification standards and government policies according to their policy approach and environmental threshold requirements. The authors analyze the Forest Stewardship Council (FSC) regional standards, the Programme for the Endorsement of Forest Certification (PEFC), the Canadian Standards Association (CSA), and Sustainable Forestry Initiative (SFI) according to an environmental indicator: riparian buffer zones. The study finds

¹³¹ As described above, the case of the ISO is one example where a clear distinction between public and private standards is difficult, as ISO is in theory private, but has public members.

¹³² FAO/WHO Codex Alimentarius Commission. 'Consideration of the impact of private standards', Rome, 2010.

¹³³ Henson, S. and T. Reardon. 'Private agri-food standards: Implications for food policy and the agri-food system', *Food Policy*, 30, 3, 2005.

¹³⁴ McDermotta, C., B. Cashore and P. Kanowski. 'Setting the bar: an international comparison of public and private forest policy specifications and implications for explaining policy trends', *Journal of Integrative Environmental Sciences*, 6, 3, 2009.

¹³⁵ Gale, F. 'Global democratic corporatism: Earth governance beyond states', *Oceanic Conference on International Studies*, 2008.

¹³⁶ Food and Agriculture Organization (FAO). 'Private Standards and certification in fisheries and aquaculture: current practice and emerging issues', 97, April, 2009.

¹³⁷ McDermott, C., E. Noah and B. Cashore. 'Differences that Matter? A Framework for Comparing Environmental Certification Standards and Government Policies', *Journal of Environmental Policy and Planning*, 10, 1, 2008.

considerable differences among the standards, some similarities to government policy approaches, and sometimes stricter private standards compared to state requirements.¹³⁸

Finally, the WTO encourages standardizing bodies to accept the Code of Good Practice for the preparation, adoption and application of Standards (TBT Annex 3).¹³⁹ Although still contested by some, most of the literature agrees that the TBT definition of standards covers the standards developed by NGOs (at least for product related requirements, not for example labor requirements). Among other things, the Code states that a standardizing body shall adopt existing or imminent international standards where relevant and make reasonable efforts to harmonize standards at the international level. For example, most private standards e.g. Sustainable Agriculture Network (SAN), Fairtrade (FLO), Social Accountability International standards (SAI, e.g. SA8000) and Ethical Trade Initiative (ETI) reference the International Labour Organization (ILO) core labor standards fulfilling an important requirement of the Code. Articles 5 and 6 of the TBT Agreement also lay out requirements for conformity assessment.¹⁴⁰

Research provides some good examples of: (i) how public and private standards facilitated the development of a public standard that enhanced global harmonization of good agricultural practices; (ii) how cooperation between institutions fosters harmonization of standards; (iii) how public standards provide a baseline for compliance with private standards; (iv) and how standards influence each other. Yet, the increasing difficulty of companies to deal with public and private standards evidences that these remain best practice examples that seem to be the exception rather than the rule.¹⁴¹ It is equally important that 'private import safety regulation meet minimum standards of effectiveness, fairness, accountability, and legitimacy, among others' and 'that it incorporates the interests of southern countries and coordinates them with the interests of northern ones.'¹⁴² As a result, harmonization of standards would lead to convergence among standards and a situation where public and private standards could substitute each other.

A potential solution: substitution of public and private standards

Substitution of public by private standards, or vice versa, reduces the amount of standards that need to be dealt with. This would, as discussed above, entail efficiencies for producers and exporters, produce welfare gains for society and allow for more companies, in particular resource weak companies, to participate in international trade. Public authorities can encourage substitution of standards by subjecting themselves to private standards, incentivizing organizations to adhere to private standards or incorporate private standards in statutes, regulations, permits or international agreements (see chapter 7).

In cases of ineffective public regulation, e.g. if public food standards are not enforced, completely missing or judged inadequate, private standards can substitute these. This has been seen in Least Developed Countries, where multinational firms' standards have been applied for food products.¹⁴³ In these cases private standards substitute public standards, benefiting also local consumers with higher safety and hygiene standards.¹⁴⁴ While consumers might be protected by private standards in the absence of public regulation or its enforcement, it remains a different question whether establishing these parallel mechanisms is beneficial in states that already have weak institutions. At the same time, private standards are not always appropriate in all country contexts thereby posing potential trade barriers to developing countries' exporters. This inappropriateness might be due to the nature of the environments in which standards were developed and limited participation by developing countries (or small producers) in their development. An often cited barrier relates to availability of equipment to conduct the tests and controls needed to comply with the standards. One way to overcome potential non-tariff barriers is harmonization of

¹³⁸ *Ibid.*

¹³⁹ WTO TBT Agreement Annex 3, accessible at: http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm, accessed on 19 July 2011.

¹⁴⁰ Most of these private standards actually comply with ISO 17065 for conformity assessment, as per ISEAL requirements. However, with the release of the new ISEAL Assurance code, this ISO compliance will no longer be a requirement, rather compliance with the ISEAL assurance code will be.

¹⁴¹ ITC client survey 2010 (internal document)

¹⁴² Meidinger, E. 'Private Import Safety Regulation and Transnational New Governance', Buffalo Legal Studies Research Paper No. 2009-13, 2009, p. 1 and 13.

¹⁴³ Reardon, T. and E. Farina. 'The rise of private food quality and safety standards: illustrations from Brazil', *The International Food and Agribusiness Management Review*, 4, 4, 2001.

¹⁴⁴ Wheatherspoon, D. and T. Reardon. 'The Rise of Supermarkets in Africa: Implications for Agrifood Systems and the Rural Poor', *DPR*, 21, 3, 2003.

standards. A good example of this and its potential trade creating benefits is provided by benchmarking efforts of G.A.P. standards to GLOBALG.A.P. and organic standards to IFOAM principles and requirements respectively.

Finally, discussions on how to deal with private standards, let alone how to 'integrate' these standards with the WTO framework remain controversial.¹⁴⁵ The members of the Committee on Sanitary and Phytosanitary (SPS) Measures at WTO are currently discussing how to 'exchange information on private standards and develop their understanding of how these relate to international and government standards'.¹⁴⁶

9. Conclusions

The interplay of private and public standards is a complex question due to, first, the amount, the complexity, and specificity of standards developed by the public domain and private entities and, second, due to the implications standards have on the international trade system and participation therein. Standards not only vary by economic sector and product but they differ by objectives and scope ranging from food safety, traceability, geographic indications, labour standards, or social and environmental issues. Additionally, standards fall into different categories according to who is involved in their development and to the uptake mechanism, i.e. market based vs. not market based, as introduced in chapter 5.

Therefore, it comes to no surprise that no straightforward answers have been found to the questions raised in section two of this paper on mutual influences of public and private standards, their similarities, overlaps, harmonization and the role of governments vis-à-vis private standards. Nevertheless, this systematic review of the literature has found some highlights related to these questions. These highlights are not only thought provoking, but provide some illustrative examples about the interplay of public and private standards. They also allow for deriving first conclusions about enabling conditions for harmonization and important aspects to draw attention to when discussing this topic.

Overall, there is a multitude of competing public and private standards that are rarely harmonized, and sometimes complement, but often duplicate each other. Many regulatory functions are performed by public and private actors creating a situation that is inefficient when it comes to achieving policy goals and opaque for all stakeholders involved. This has not been sufficiently alleviated by (i) initiatives and institutions working towards the harmonization of standards, (ii) the provision of examples of good practice of governmental action, or (iii) the creation of meta-standards. Often, private standards fill the gap where governments do not implement/enforce standards they committed to. Although this seems to be better than complying with no social or environmental standards, this cannot be a satisfactory status in the long term as it further weakens the role of governments, particularly in developing countries. The relation between the public domain and private standards should rather be a complementary as opposed to a substituting one.

How private and public standards interact is determined, at least to a certain extent, by the legitimacy of the standards. For example, if a private standard is not perceived as legitimate by policymakers, it will surely not be incorporated in public regulation. At the same time, public authorities may influence the perceived legitimacy of private standards in the public domain in many ways, through actions such as disseminating knowledge about the use or value of private standards, or incentivizing organizations to adhere to private standards. Thus, governments have a key role to play in shaping the interplay of public and private standards. Public standards will always play a key role in protecting the public good and correcting market failures. Public authorities also ensure that basic standards are consistent with WTO regulations, SPS and TBT agreements in particular, and with other supranational public standards.

Public regulation is most effective when it maximizes the effectiveness of private standards. Hence, incentives for actors developing and implementing private standards need to be aligned to public interest. Public interest looks to maximizing welfare gains, which not only relates to food safety but also includes social and environmental protection. How this can be accomplished has been described for food safety

¹⁴⁵ Mbengue, M.M. 'Private standards and WTO law', *Bridges*, 5, 1, ICTSD, 2011.

¹⁴⁶ Please see: http://www.wto.org/english/news_e/news11_e/sps_30mar11_e.htm accessed on 21 November 2011.

regulation where an effective system at reduced costs has been established. A similar solution for social and environmental standards and standards with sustainability claims seems far from being attainable. Agreement on widely accepted 'meta standards' would be an important first step as has been implemented for food safety and quality standards.

Efforts of harmonization are more advanced for food safety and quality standards compared to social and environmental standards, where a widely accepted authority or coalition of stakeholders promoting harmonization and taking responsibility is still missing. Promising first steps have been taken by the ISEAL Alliance. Although incentives for private standards to engage in harmonization may be small or non-existent as they are looking to differentiate products from competitors, if one takes the exporters' perspective there is an urgent need for innovative efforts leading to more complementarities and harmonization.

An avenue still to be explored is the harmonization of private standards at pre-competitive level. This would still allow for further differentiation of products through standards, but builds a common base of requirements and compliance policies according to the specific type/objectives of standards. This base should be built on science, and widely accepted factors such as human rights, social acceptability or social justice. This would also be important in addressing the concerns about private standards being technical barriers to trade.

Generally, there is a need for more cooperation among standard setters, public authorities, international organizations and the private sector to prevent high transaction costs that many market actors currently face. Together, these actors need to (i) ensure that societal interest is served by using the most appropriate private standards; and (ii) guarantee a minimum of standards' effectiveness, fairness, accountability and legitimacy. This literature review provides examples showing that efficient standard setting and implementation is possible if key actors get involved and the right incentives are provided.

Appendix I Further readings

Bingen, R. J. and L. Busch. 2006. *Agricultural Standards: The Shape of the Global Food and Fiber System*. Dordrecht: Springer

Guthman, J. 2004. *Agrarian Dreams: The Paradox of Organic Farming in California*. Berkeley: University of California Press.

Higgins, V. and G. Lawrence. 2005. *Agricultural Governance: Globalization and the New Politics of Regulation*. London and New York: Routledge.

Ingram, M. and H. M. Ingram. 2005. 'Creating Credible Edibles: The Organic Agriculture Movement and the Emergence of United States Federal Organic Standards.' Pp. 121-148 in *Routing the Opposition: Social Movements, Public Policy, and Democracy, Social Movements, Protest, and Contention*; V. 23, edited by D.S. Meyer, V. Jenness and H.M. Ingram. Minneapolis: University of Minnesota Press.

Marlin-Bennett, R. 1993. *Food Fights: International Regimes and the Politics of Agricultural Trade Disputes*. Langhorne, Pa., United States: Gordon and Breach.

Ponte, S., P. Gibbon and J. Vestergaard. 2011. *Governing through Standards: Origins, Drivers and Limitations*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan.

Tamm Hallstrom, K. and M. Boström. 2010. *Transnational Multi-Stakeholder Standardization: Organizing Fragile Non-State Authority*. Northampton, MA: Edward Elgar Pub. Inc.

Tamm Hallström, K. 2004. *Organizing International Standardization: Iso and the Iasc in Quest of Authority*. Cheltenham, United Kingdom; Northampton, MA: Edward Elgar.

Appendix II Sources of literature

Three main sources of literature were used in our research:

- Three electronic databases EBSCO, Science Direct and ISI Web of Knowledge were used for the review. EBSCO and Science Direct were used due to their comprehensive coverage of business research and ISI Web of Knowledge was used to search key journals that have not been covered by the other databases.
- Additional sources included previous literature reviews, research institutes, think tanks and international organizations working on private standards.
- Lastly, cross-references providing background information on specific topics, such as conceptual approaches applied in research were identified, checked for relevance and quality and included in this work.

Appendix III Keywords and search terms

The definition of search terms followed two principles: the terms had to be (i) wide enough to make sure not to miss any reference on the topic and (ii) be precise enough to limit search results to a manageable quantity. With an inconsistent terminology in this area, this process proved to be complex. For example, several terms are used to refer to the nature of standards under review, including among others private standards, voluntary standards, sustainability standards and certifications. As the literature on these standards and their impacts on value chains is relatively young and limited it was decided to make the search as broad as possible by defining more general keywords. See table 3 for an overview of search terms used in each category.

Table Search term by category

Sustainability		Certification	Market	Operations	Impact	Meso-Macro
Sustainab*	A N D	Certif*	Market	Yield	Impact	Policy
Environment*		Standard*	Buyer	Product*	Income	Govern*
Ethic*		Regulat*	(Supply OR Value OR Commodity) AND Chain	Quality	Effect	MDGs OR (Millennium AND Development AND Goals)
Social		Label*	Consumer	Control AND system	Premium	Development
Responsib*			Governance		Price	Poverty
			Power		Surplus	Community
			Trade		Outcome	Gender
			Stakeholder		Cost	
			Market AND (Share OR Participation)		Risk	
			Stakeholder		Livelihood	

Related journals that were not covered by the electronic databases EBSCO and Science Direct were searched for in the database ISI Web of Knowledge separately. For a list these publications see table 4.

Appendix IV Search strings and electronic search engines

The selected keywords were then used to construct strings with Boolean connectors (AND, OR, and NOT) searching the electronic databases. A wildcard (*) search was also included on some words so to better capture the alternative spellings of core concepts. The strings were used to search in titles and abstracts for the EBSCO database and included also keywords for Science Direct. In the ISI Web of Knowledge database the search strings were applied to search for selected journals not covered by the other two databases.¹⁴⁷ Only scholarly (peer reviewed) journals in databases and no particular timeframe have been selected for searches. In EBSCO, selected databases included Academic Search Premier and Show all Environment Complete.

The total number of articles found in the initial search was 7536 in EBSCO, over 380,000 in Science Direct and 5,603 in ISI Web of Knowledge. Due to the high numbers of results, the search strings had been amended adding new keywords, removing some of the very general keywords and adding exclusion criteria. Re-running searches with the new search strings significantly lowered returns to 2,187 papers in EBSCO, still 130,000 papers in Science Direct and no major change in the ISI database. As even the exclusion of a number of subjects¹⁴⁸ did not significantly reduce results and due to the fact that the search in Science Direct showed high overlap with the search in EBSCO it was decided to focus further screening on the two other databases, ENSCO and ISI Web of Knowledge.

Additional sources included research institutes, international organizations and further bodies involved in research relating to private standards, and other literature reviews. The search for relevant papers consisted in screening these organizations' websites and checking cross references. The documents were screened using the research questions and an additional 874 papers (previous literature reviews) and 4,142 papers (research institutes, etc.) were identified and included in the subsequent phase of the research. Another source of literature was derived from cross references in articles.

A total of 12,806 papers were included in the screening process.

¹⁴⁷ Journals include: Academy of Management Review, Business and Politics, Consumer Policy Review, Corporate Governance Journal, Cultural Sociology, Environment, Development & Sustainability, Forest Trend, GlobalEDGE Business Review, Human Organization, International Journal of Consumer Studies, International Journal of Sustainability, Journal of Business Ethics, Journal of Public Policy and Marketing, Journal of Strategic Marketing, Review of International Political Economy, Small-scale Forestry, Small Enterprise Development, Sustainable Development International, Social Enterprise Journal.

¹⁴⁸ This lead to the exclusion of the following subjects: Arts and Humanities, Biochemistry Genetics and Molecular Biology, Chemical Engineering, Chemistry, Computer Science, Decision Sciences, Earth and Planetary Sciences, Engineering, Immunology and Microbiology, Materials Science, Mathematics, Medicine and Dentistry, Neuroscience, Nursing and Health Professions, Pharmacology, Toxicology and Pharmaceutical Science, Physics and Astronomy, Psychology, Veterinary Science and Veterinary Medicine.

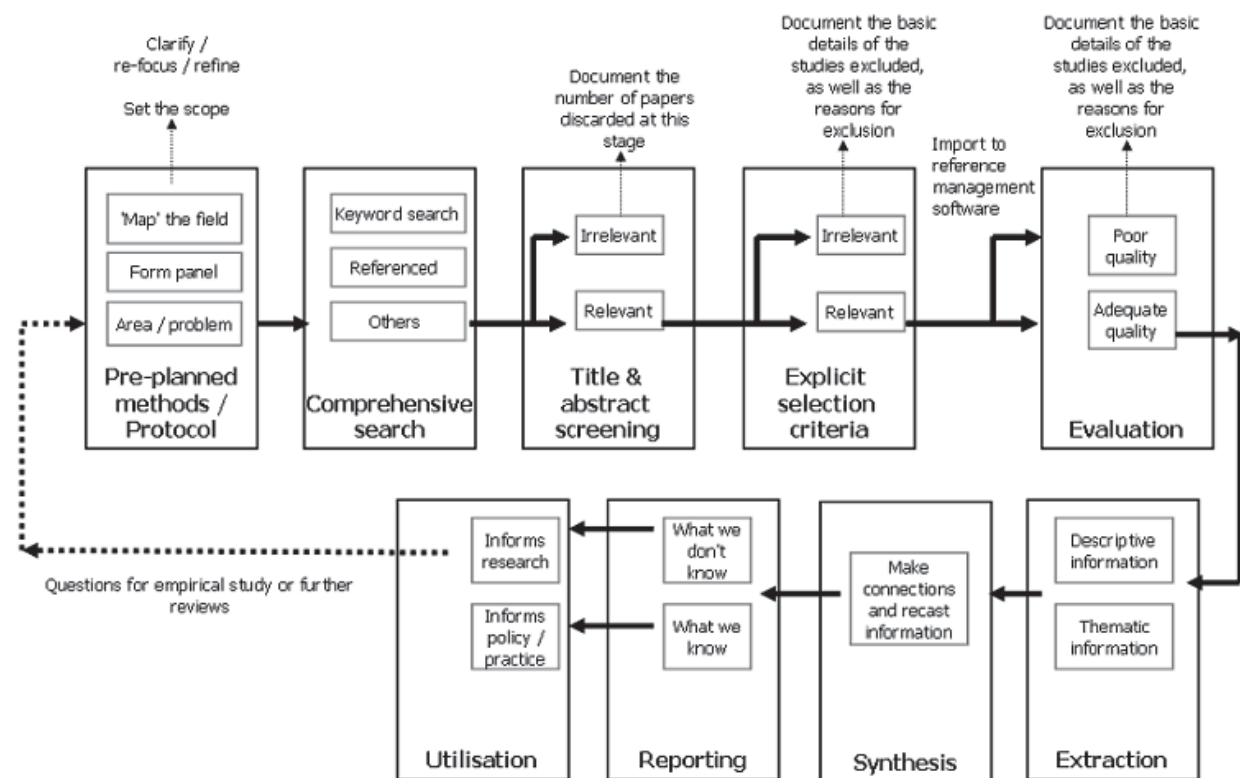
Appendix V Systematic review methodology and screening process

Figure 5 provides an overview of the systematic literature review process. The screening process entails three steps: a title review, the review of abstracts and the full paper review. Before each step inclusion and exclusion criteria had been defined to ensure transparency and replicability of the process.

The *title review* has been carried out according to predefined keywords that led to the exclusion of papers and reduced the amount of articles to more manageable numbers. For the EBSCO search results there was a remainder of 450 papers, for the ISI database 385 papers remained, 788 references from the literature reviews were kept for the abstract screening and screening the research institutes resulted in 1,642 papers kept.

The next step consisted in the *abstract review* according to predetermined topics operationalized through keywords. It was decided to keep 78 papers for full screening from EBSCO, 165 papers from ISI, 779 papers from the literature reviews, and 391 from research institutes and other organizations.

Figure 5. Steps in a systematic literature review



Source: David Denyer, Advanced Institute of Management Research, www.networkcranfield.com

Papers have been dismissed in the process of abstract screening when dealing with: CSR issues that are not related to standards//Environmentally friendly or sustainable investments//Socially friendly investments//Voluntary standards in developed countries//Ethical trade issues other than standards//Sustainable development issues other than standards//Other kinds of certification, e.g. land certificates//Sustainability economics//Consumer behaviour issues//Voluntary initiatives to foster 'ethical' corporate behaviour or projects other than standards, e.g. codes of conduct//Private standards for non-export products, e.g. milk//Ethical behaviour of employees or managers//Public-private partnerships//UN Global Compact.

Out of all papers kept for full screening we included those that deal with the question of this report. One hundred fifty seven (133) papers were found to deal with this issue and were kept for full screening.

Lastly, in a final screening step full papers were reviewed according to defined selection criteria, such as its contribution to research. This screening exercise resulted in 88 papers that have been analysed for this literature review.

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