

Private voluntary standards and the World Trade Organisation (WTO) Committee on Sanitary and Phytosanitary Measures

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The Committee on Sanitary and Phytosanitary Measures (SPS Committee) deals with government regulations in the areas of food safety, animal and plant health. At these meetings, WTO member countries have the opportunity of raising specific trade concerns, e.g. if they believe that another country's sanitary and phytosanitary (SPS) measures are more trade-restrictive than necessary for health protection. In June 2005, St. Vincent and the Grenadines raised concerns about GlobalGAP (formally EurepGAP) pesticide requirements for banana importation, and the relationship between GlobalGAP and official EU requirements. Other developing countries shared this concern, wondering what alternatives were available to affected developing countries. The EU's response was that GlobalGAP standards were not official EU requirements and even if they went beyond official EU regulations, they were not in conflict with EU legislation. This paper seeks to explain how private standards have come up at the WTO and what some of the concerns are.

The private standard debate within the SPS Committee
Private standards have repeatedly been discussed in the SPS Committee. The discussions have focused on three themes:

- **Market access:** Some say that standards set by the private sector can help suppliers improve the quality of their products and gain access to high-quality markets. Others argue that private standards can be more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g. accepting only one way of achieving a desired food safety outcome) than official import requirements, thus acting as additional barriers to market access.
- **Development:** The costs of complying with private standards, and the additional cost of certification, sometimes for multiple sets of standards for different buyers, can be a problem especially for small-scale producers in developing countries.
- **WTO law:** While some are of the view that setting standards for the products they purchase is a legitimate private sector activity and not a government one, others insist that the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) makes governments in importing countries responsible for the standards set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of food safety measures and are more trade-restrictive than necessary to protect health.

Health protection and requirements from the government

The concerns of governmental trade officials (particularly in developing countries) of the proliferation of private standards have to be seen in the context of the SPS Agreement. The SPS Agreement was negotiated by governmental food safety, plant and animal health regulators to impose significant health protection requirements on products moving in international trade. The basic requirement under the SPS Agreement is that measures can be taken only if necessary for health protection, with scientific evidence required to demonstrate this "necessity" (except for emergency situations when temporary actions may be taken).

Under the SPS Agreement, the preferred way of meeting the justification requirement is through the use of internationally developed food safety, plant and animal health protection standards – that is, those adopted by the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC) Commission on Phytosanitary Measures (CPM), and the World Organization for Animal Health (OIE). On the basis of these international standards, the harmonisation of national requirements facilitates trade through the reduction of proliferation of distinct national requirements.

Alternatively, governments can justify national standards if they are based on an appropriate risk assessment, but the measures imposed must be no more trade restrictive than required to achieve the desired level of health protection. The level of health protection sought by governments

cannot be arbitrary and should be consistent in the face of similar health risks.

Importantly, the SPS Agreement contains a number of provisions to ensure the transparency of SPS requirements. Not only must governments give advance notice of their intention to modify SPS measures, but they must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the evidence underpinning measures), and ensure that all measures are published promptly.

Food safety requirements are subjected to a different set of legal obligations than what is applied to quality and environmental measures or measures adopted to avoid the deception of consumers. This, in addition to the notification requirements, pushes governments to identify objectives and to clearly separate and distinguish between requirements imposed for health protection and those imposed for other purposes.

Finally, the WTO agreement ensures that SPS requirements can be challenged by other trading partners, through the use of the WTO's unified dispute settlement procedures.

Government SPS requirements versus private standards objectives

In contrast to these globally negotiated disciplines on governmental actions, private standards are seen by many developing countries as going in exactly the opposite direction. The private standards address a mix of SPS and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe, or may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers.

There is a proliferation of distinct private requirements, with little harmonisation. Certification is implemented by private companies, at much greater expense than governmental schemes, which, at most, seek to recover costs. Certification must also be renewed regularly, whether or not production conditions have changed. Some of the private standard bodies have recognised this problem and some efforts to “benchmark” or accept other private standard schemes as equivalent are underway.

Developing countries' concerns

The SPS Agreement encourages the participation of developing countries in the preparation and adoption of international standards, through the creation of trust funds and various assistance programmes. Other provisions of the SPS Agreement require consideration of the special needs of developing countries, through the provision of special and differential treatment. The SPS Agreement also requires that there be no unjustified costs in testing, certification or approval procedures, to ensure that these do not become barriers to trade.

Conversely private standard bodies have apparently not taken the effects of their standards on developing countries or the degree of their trade restrictiveness into account.

There are growing concerns in developing countries regarding the effects of these private standards and the degree of their trade restrictiveness. Suppliers who produce for the export market (toward industrialised countries) face difficulties in complying with private standards such as those required by global retailers and several cases show many have dropped out of the market.

Many developing countries find it difficult to produce goods that meet the internationally agreed food safety standards and when they do meet standards, this is often still insufficient to gain access to many markets, as the private standards set requirements well in excess of those of the Codex, IPPC or OIE.

Private retailers have often imposed and modified their requirements without any advance notice, and with no opportunity for producers in other countries to comment or complain. Recently, some efforts, including the smallholder taskforce at GlobalGAP, have begun to move in a different direction. However, compared to the disciplines that the SPS Agreement places on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

A global forum to discuss standards

While one may question whether a strictly inter-governmental forum such as the SPS Committee is the most appropriate place to address the issue of private standards, it is apparent from the concerns of developing countries that a forum for discussion is needed. Private standards have become a regular feature on the agenda of meetings of the SPS Committee. In addition, on two occasions in the past two years information sessions have been held in the margins of the Committee meetings. These have provided the opportunity for two-way education and awareness-raising; increasing the knowledge and understanding of government regulatory officials about the operation of various private standard schemes and their objectives, while at the same time making the operators of the private schemes aware of the concerns and effects of standards on developing countries.

Going beyond discussions

Apart from a forum, there is clearly a need for capacity building to help developing country exporters meet both official and private SPS requirements. The Standards and Trade Development Facility (STDF) is a mechanism to coordinate the activities of bilateral and multilateral donors who provide technical assistance or capacity building in the SPS area. It also provides funding for a small number of projects and project preparations grants. The Food and Agriculture Organization of the United Nations (FAO), the OIE, the World Bank, the World Health Organization (WHO) and the WTO jointly established the STDF. Activities focus upon assisting developing countries to enhance their expertise and capacity to analyse and to implement international SPS standards. It is one example of the current “Aid for Trade” Initiative aimed at helping developing countries overcome supply-side constraints. The STDF has taken a pragmatic approach to private standards as prerequisites to market access in many cases. Several projects, especially in Africa, include a component aimed at achieving compliance with a relevant private standard in conjunction with international standards.