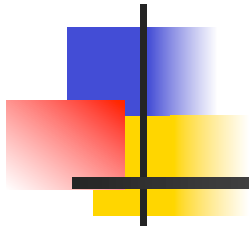


The Devil is in the Details: The Impact of Public and Private Standards on Trade



Jill E. Hobbs and William A. Kerr
Dept. of Bioresource Policy, Business & Economics
University of Saskatchewan

Presented at the 3rd Annual Canadian Agricultural Policy Conference,
'Growing Canada's Agricultural Economy: The Role of Trade',
Ottawa, January 2013



Emerging issues in food markets

- Heightened awareness of food safety
- Multiple dimensions of food quality
 - Environmental footprint; organic; animal welfare; origin/source; 'natural'; GMOs ; labour standards ...
- Mandatory (public) standards
- Voluntary (private) standards
- Labelling and certification



Policy questions

- Public Vs Private standards
- Trade diverting, reducing?
- Trade enhancing?
- Implications for exporters?
- Implications for policy makers?



Public Standards

- Mandatory (regulatory) standards
 - legal obligation for compliance
- Response to a perceived market failure
 - Negative externalities (food safety)
 - Public goods (environment)
 - Information asymmetry? (labelling)
- Objective (in theory): achieve socially optimal level of food safety, environmental protection



Public Standards - Examples

- **Food safety:** Mandatory HACCP; US Food Safety Modernization Act (FSM) (with inspections of foreign facilities, specified correct agronomic practices, much more)
- **Environment:**
 - Pesticide residue limits;
 - Pollution regulations; waste water treatment
 - Potential environmental tariffs



Public Standards - Examples

- **Animal welfare:**

- EU ban on cages for layer hens (2012)
- Bans on confinement pens for sows (EU, US)

- **Labelling, certification:**

- Mandatory nutrition labelling
- National organic standards (EU, US, Canada)
- Certification of food safety practices in US FSM
- Certification of labs, lab technicians and certifiers



Public Standards - Challenges

- Different countries have different standards (social objectives; priorities; resources)
- Implications for relative competitiveness of imports, exports
- Potential negative trade effects
- Creation of 'pollution havens' or 'low animal welfare' havens, etc.
- Pressure to regulate, restrict imports (environmental tariffs)
- Challenges for WTO

What does the WTO have to say?



- **Principle of Non-Discrimination:**
 - ***Like products:*** cannot discriminate based on process and production methods (PPMs)
 - ***National Treatment :*** imported products must be treated equally to domestic 'like products'
 - ***Most-Favoured nation treatment:*** all foreign like products granted same market access
 - E.g. negative labelling of imported pork produced under lower animal welfare standards not allowed
 - Default principle unless exceptions agreed to



What does the WTO have to say?

- **GATT Article XX: General Exceptions**
- Measures permitted that would '*protect public morals ... animal... life or health*' or be '*relating to the conservation of exhaustible natural resources*'
- E.g. US Shrimp-Turtle case (1998)
- Could the 'public morals' argument apply to animal welfare? – EU ban on imports of seal products
- Weaker case; unwelcome precedent?



SPS Agreement

- Permits measures that are "*necessary to protect human, animal or plant life and health*"
- Based on scientific risk assessment
- Refers to Codex Alimentarius for development of internationally-agreed standards
- Applies only to public (regulatory) standards



TBT Agreement

- Technical barriers: labelling, technical standards, packaging requirements, etc.
- Must conform to GATT principle of non-discrimination
- Like products should be treated the same
- Ambiguous wording regarding legitimacy of process-based regulations
- Applies only to public (mandatory) standards



Lessons from experience

- WTO dispute panel rulings:
 - US Shrimp-Turtle case
 - US Tuna-Dolphin case
 - EU Beef Hormone ban
 - EU GMO ban
 - C.O.O.L
- Impending issues:
 - Animal welfare?
- But!

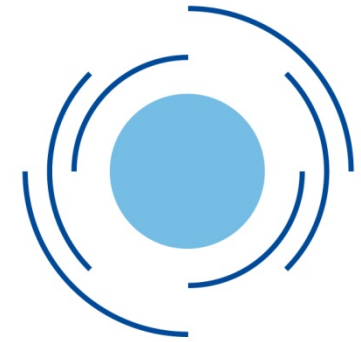


What does the WTO have to say?

- While WTO mandatory standards carry a legal obligation to comply – there has been considerable slippage.
- Most recent major WTO **ISSUES** have been consumer and/or environmental issues
 - Beef produced using growth hormones
 - EU import ban on GMOs – new regulatory regime not compliant (political decision rather than science-based)
 - Adventitious presence – zero tolerance
 - Animal welfare, labour standards, green labels, etc.
- No progress at WTO - Meanwhile ...

Proliferation of Private Standards for food safety and quality

BRC GLOBAL STANDARDS
THE WORLDWIDE STANDARDS OF CHOICE 



GFSI
Global Food Safety Initiative

SALMON

SAFE





Private standards

1. Voluntary consensus standards
 - coalitions of firms, industries, may involve government
2. Proprietary standards (firms)
3. Third party standards
 - NGOs, independent standard-setting bodies

Private standards

1. Voluntary Consensus standards

- coalitions of firms, industries, may involve government

E.g. GLOBALGAP (EUREPGAP)

- Business-to-business standard
- Retailer-driven, multiple countries (1997)
- Food safety, environment, animal welfare, worker health & safety



Private standards

1. Voluntary Consensus standards

E.g. Assured Food Standards

- Producer organizations (UK)
- Red tractor logo (consumer signal)
- Food safety, animal welfare, environment



E.g. CanadaGAP

- Canadian Horticultural Council
- To merge with Canadian Produce Marketing Association Food safety program (RWFSP) in 2013



Private standards

- **GFSI – Global Food Safety Initiative**
(Consumer Goods Forum)
- Retailer driven: improvements in food safety management systems
- Attempt to consolidate private food safety standards
- Attempt to reduce duplication
- Benchmarks, certifies existing private standards:
 - British Retail Consortium (food safety)
 - Safe Quality Foods (SQF)
 - International Food Standards (IFS)
 - CanadaGap





Private standards

2. Third Party Standards

- ▶ NGOs, independent standard-setting bodies
- E.g. ISO, SPCA...



3. Proprietary Standards (firms)

- E.g. Nature's Choice (Tesco PLC)
- E.g. WholeFoods (USA)





Private Standards

- ▶ **Economic functions**

- ▶ Product differentiation: communicated to consumers (labelling)
- ▶ Enhance supply chain management
- ▶ Reduce liability

- ▶ Role for **third party verification** (certification) of private standards

- ▶ Can be *de facto* mandatory if majority of market adopts



Are private standards trade diverting, reducing?

- Compliance costs can be significant (Henson, 2006)
- Higher burden on exporters from countries with lower public & private standards
- Challenge for exporters from developing countries
- Asset specific investments by suppliers
- Increasing concentration in retail sector: control access to global supply chains
- No mechanism for challenge by trading partners



OR, are private standards trade facilitating?

- Harmonization & mutual recognition occurring faster than with public standards, e.g. GFSI
- Access to global supply chains across multiple retailers in multiple countries
- Encourages product differentiation and leads to differentiated markets
- Need for more empirical work

Developing country implications



- Public and private standards both a challenge
- Costs of compliance
- Capacity for verification, certification, testing
- Discriminatory mandatory public standards could be challenge through WTO mechanisms
- But no jurisdiction over private standards
- Yet private standards can be *de facto* mandatory if a market requirement



Beyond the WTO

- ▶ No jurisdiction over private standards
- ▶ SPS Agreement: Member States should take 'reasonable' measures to ensure that '**non-governmental entities**' comply with the SPS Agreement
- ▶ 'Non-governmental entities' not defined in SPS
- ▶ TBT offers clarification? A body with *legal power* to enforce a technical regulation



Conclusions

- Extension of WTO jurisdiction over private standards hard to envision
- Private standards for food safety and quality likely to gain in importance
- A market response to consumer preferences
- Trade diverting/reducing or enhancing?
→ A need for more empirical work
- Potential public sector role in facilitating voluntary quality verification, certification?



Conclusions

- No progress appears likely at the WTO, the development of harmonized public standards at the Codex, World Organization for Animal Health (OIE) and International Plant Protection Convention (IPPC) are extremely slow and cumbersome, private standards continue to proliferate – with mixed results for trade. Is this where trade policy should be made?