



# Private Standards in the Food and Agriculture Sector

Under the scrutiny of  
the TBT and the SPS Agreements



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REGULATORY BARRIERS TO TRADE:  
TBT, SPS AND SUSTAINABILITY  
STANDARDS

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# Private Standards or Sustainability Standards

‘Standards that are elaborated by non-governmental entities, which belong to them, whether they are profit oriented (private companies) or non-profitable bodies’, with which compliance is not mandatory.

Pascal Liu

# Selos de PS

Nature's Choice, TESCO (2014):



TAEK, Pão de Açucar (2006)



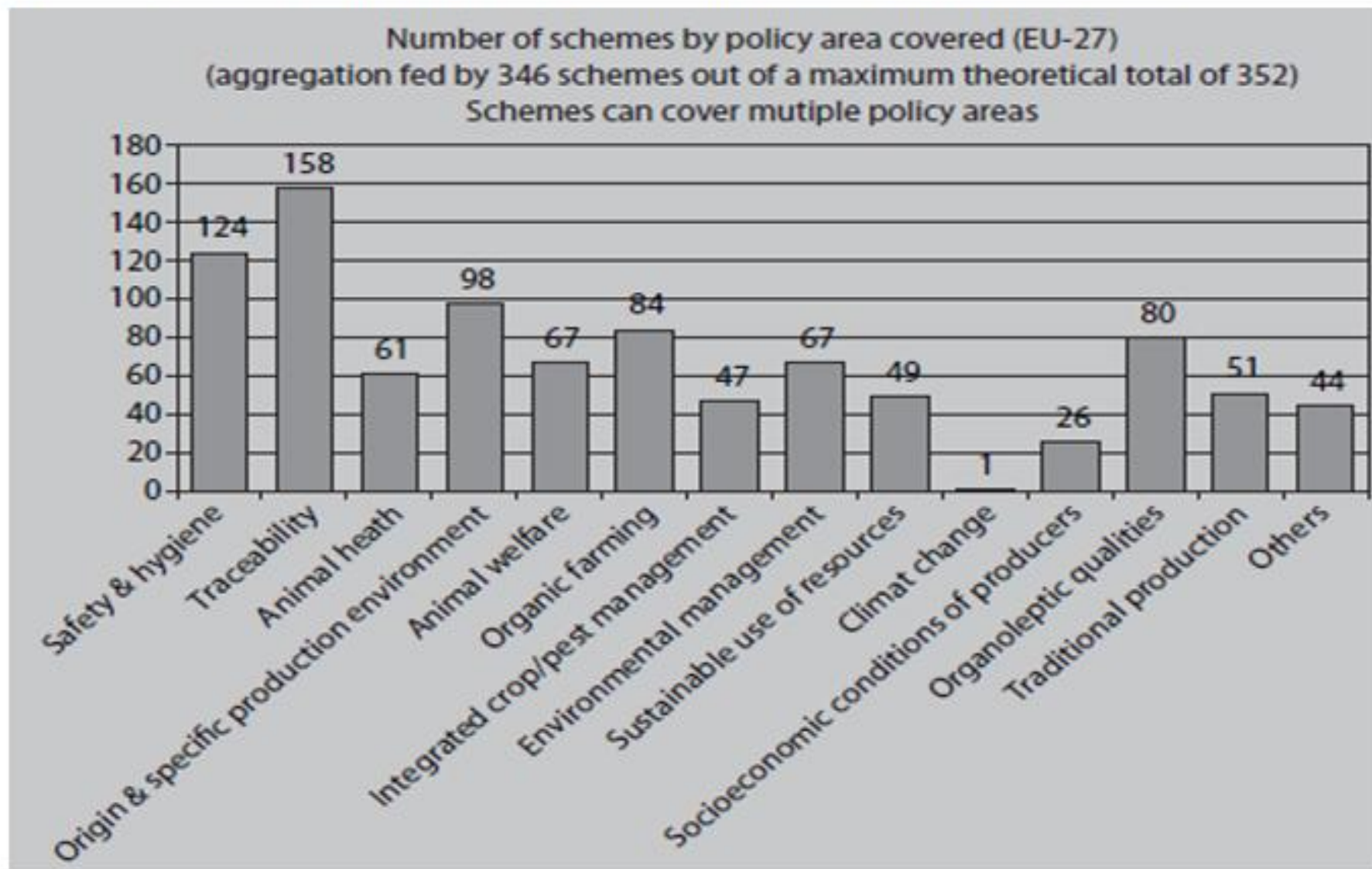
The Marine Stewardship Council (2011):



GlobalGAP (2013):



**FIGURE 13: Number of private standards certificates covered by policy areas in the EU**



Source: Institute of Private Food Law (2011)

# Why are they created?

## Main Motivations

Responses to food risks/Increase of real risks acknowledged by consumers

Transfer of responsibility on food safety in the public and private sectors

Globalization of production chains

Social and demographic changes and increase in the consumers interests on food production processes

Proliferation of premium trade marks

Need of differentiation in products

# It sounds very sustainable... What's the problem then?

## Main issue on PS

Voluntary market standards prepared by private companies might become de facto mandatory, such as in the food sector, supermarket chains, producers and cooperatives .

Even though they are not binding on producers, the only option left besides fulfilling the standard requirement is to leave out the market.

# Private Standards in the Organic Sector

The labyrinth of requirements in both government and private sectors constitutes an obstacle to trade, which constrains organic market development and denies market access to many, including hundreds-of-thousands of small producers in developing countries.

The Global Organic Market Access (GOMA) project has the aim to simplify the process for trade flow of organic products among various regulatory and/or private organic guarantee systems .

GOMA focuses on harmonization and equivalence of organic standards and certification performance requirements as mechanisms for clearing trade pathways.



# The ISEAL Alliance

The International Social and Environmental Accreditation and Labelling Alliance (now just referred to as the ISEAL Alliance) was founded in 2002 by a group of sustainability standard-setters.

Today, ISEAL's Codes of Good Practice are seen as global references for developing credible standards

# GLOBALG.A.P.

GLOBALG.A.P.'s roots began in 1997 as EUREPGAP, an initiative by retailers belonging to the Euro-Retailer Produce Working Group.

British retailers working together with supermarkets in continental Europe became aware of consumers' growing concerns regarding product safety, environmental impact and the health, safety and welfare of workers and animals.

Their solution: harmonizing their own standards and procedures and developing an independent certification system for Good Agricultural Practice (G.A.P.).

## Private Standards under the TBT and SPS Agreements

In 2005, the small Caribbean island of St. Vincent, a sovereign State Member of the WTO, raised a Specific Trade Concern, under the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee), complaining about restrictions on the sale of bananas to the European Union. Such concerns were not about the official pesticide residue requirements of the EU, but instead on the requirements of a private, non-profit organization so called GLOBALG.A.P.

In general, WTO only takes into consideration voluntary standards when they belong to international standardization bodies, such as ISO or Codex, and the WTO agreements refer to them as a means of harmonization (See TBT and SPS Agreements ). Whenever countries use these international standards for products entering their territory, there is a 'presumption of conformity'.

# PS under TBT

If a regulation is prepared, adopted or applied in accordance with relevant international standards, according to Article 2.5,

**2.5 (...) [I]t shall be rebuttably presumed not to create an unnecessary obstacle to international trade.**

**At. 2.9. When there is not a relevant international standard or when a regulation is not in accordance with the technical content of relevant international standard, Members should proceed to notifications at an early appropriate stage, when amendments can still be introduced and comments taken into account, identifying, whenever applicable, the parts which in substance deviate from relevant international standards.**

**However, instead, Members are, in fact, transferring their international obligations (such as the ones set on the 2015 Treaty of Paris for reduction of emissions) to their industry.**

**There is the outcome of private standards!**

# PS under the TBT Agreement

Annex 3 of TBT provides for a **Code of Good Practice** for Preparation, Adoption and Application of Standards. In the General Provisions of the Code of Good Practice, it is provided that the Code is open to acceptance by any standardizing body – whether a central government body, a local government body or a non-governmental body – within the territory of a WTO Member.

TBT, Article 4, demands Members to ensure that their central government standardizing bodies as well as non-governmental bodies within their territories accept and comply with the Code of Good Practice.

Moreover, it also provides that the obligation of Members in relation to compliance of standardizing bodies with the commandments of the Code of Good Practice **‘shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice’**.

In the Code of Good Practice, paragraph E, it is provided that the standardizing body, which might be a non-governmental one, shall ensure that standards are not prepared, adopted or applied ‘with a view to or with the effect of creating unnecessary obstacles to international trade’.

# PS under the SPS Agreement

One of the discussions in the SPS Committee was based on the wording of Article 13 of the SPS Agreement. The requirements for Members are clear-cut: they shall take reasonable measures to ensure that non-governmental bodies comply with the provisions of the SPS Agreement.

# PS on Food and Agriculture under the WTO

The grey area between the State's involvement and the private sector's only involvement makes it more difficult to point out a violation issue under the WTO system.

Nevertheless, it seems that **whenever it is possible to show evidence of State's involvement in the private standard implementation, it might be possible to raise an issue of State's responsibility .**

Such an understanding cannot be ignored under Specific Trade Concerns in the TBT and SPS Committees.

Obrigada pela atenção!

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