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## GLOBAL GOVERNANCE IN FOOD SAFETY: A COMPARATIVE STUDY ON PRIVATE FOOD STANDARD INITIATIVES

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### Abstract

*We eat food to keep healthy and to survive. When the food we eat has negative effects on health, then we describe it as “unsafe”. Many of the diseases humans carry are food-borne. Regulatory initiatives in food safety emerged because of many factors including the globalization of economic activities, advancements in food science and transportation technology, and the dominance of global retail chain. But following consumers’ concern in the prevailing mechanisms for food safety control, alternative mechanisms in global food safety governance emerged, now known as private initiatives in food safety governance. Due to the growth of private standards, a debate has emerged focusing on the relationship between these private initiatives, global public authorities and international trade law. Private standards may present barriers to the trading of a number of products and may therefore run counter to international trade rules. Some critics have also claimed that private standards are challenging the legitimacy of established multilateral trade institutions such as the World Trade Organization (World Trade Organisation 2005). At this point, it is important to probe into the emergence of private food safety standards governance as a complementary mechanism in global food safety governance. I argue that the existence of private initiatives seems to be unavoidable, hence the need to incorporate them into international trade rules and institutions by reconstructing existing systems and clarifying the roles of private standards in food safety governance. The argument is presented through narratives, descriptions and analysis.*

**Keywords:** private initiatives; World Trade Organisation (WTO); Sanitary and Phytosanitary Measures (SPS); private food safety (PGS); World Health Organisation (WHO)



## 1. Introduction

Food safety usually refers to compliance with health or safety standards as determined. If food has adverse effects on our health when we prepare, use or eat it, we generally describe it as unsafe. The WHO's report (1999) indicates that 1.5 billion cases of diarrhea in children and over 3 million premature deaths occurred due to foodborne diseases both in developed and developing countries. The United States (US) estimated that 48 million illnesses, 128,000 hospitalizations and 3000 deaths result each year from foodborne diseases (Centre for Disease Control and Prevention 2011). The Office for South East Asia Region, World Health Organisation Food Safety Programme (1999) reported that approximately 1.8 million children die in developing countries yearly as a result of foodborne diseases caused by contaminated food and water.

Global food safety regulatory initiatives emerged primarily to address the rapidly decaying public trust in modern global food chains, complicated by many factors including the globalization of economic activities, advancements in food science and transportation technology, the multinationalization of the food industry, and the advent of the World Trade Organisation (WTO) in 1995 (Wouters *et. al.* 2008). Consumers' are concerned with the prevailing mechanisms of food safety control (Henson & Caswell 1999), and as a result, alternative mechanism in global food safety governance emerged. This trend of alternative mechanism expedited the growing influence of private regulators.

Both public and private standard institutions have pros and cons. The purpose of this paper is to introduce global food safety governance, showing the controversy on the status of public and private institutions and presenting the way for mitigating problems of private institutions in food safety standards governance. The paper conceives private food safety standards governance as having emerged as a complementary mechanism in global food safety governance.

## 2. Comparative Implication of public- private standard in Global Food Safety

### A. Implication of Public Institutions

Traditionally, control measures in food safety have been regarded as regulatory spaces exclusively filled by states (Casey 2009). The WTO as a public authority governs, regulates and facilitates food



trade through its Agreements on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) (Henson & Humphrey 2010). This process basically is developed to promote trade liberalization, and became the de facto enforcer of standards through the legal matters it adjudicates (Hatanaka *et. al.* 2005). The Codex Alimentarius Commission (CAC) is the assigned standard-setting organization for food safety under SPS. The CAC was created in 1963 by Food and Agriculture Organisation (FAO) and WHO to develop food standards, guidelines and related codes of practice with three purposes: (1) protecting health of the consumers; (2) ensuring fair trade practices in the food industry and (3) promoting coordination of all food standards (CAC, 2011).

However, public institutions of food safety are facing criticism on their effectiveness and efficiency in global food safety issues when one compares private initiatives. Lin (2011) claimed that no multilateral legal instrument addresses global food safety issues in a comprehensive manner. There are a number of other ongoing criticisms.

First, WTO multilateral trading facilitators never made food safety a core concern (Lin 2011), and do not have the provisions regarding the effective promotion of food safety beyond their set of trade agreements (Niu 2006), whereas private standards are believed to do these. Besides, sometimes SPS stands as a means for WTO members to create exceptions to each other's food safety rules and standards to facilitate food trade (Silverglade 2002).

Second, codex scientific basis of standard setting has faced serious challenges, though it has legitimacy of substantive and procedural rules, and the accountability and transparency in decision making process (Smythe 2009). This is especially the case in controversial disputes over beef growth hormones (BGH) and genetically modified organisms (GMO). Also, in decision making, as a democratic process, they take decisions based on majority vote rather than consensus, hence creating conflicts of interest over the scientific authority.

Third, WHO which is the UN-mandated agency in global health issues has so far failed to play a leading role in coordinating and creating governance initiatives (Lin 2011). In addition, it has failed to fully employ its normative authority (Taylor 2002).



## B. Implication of Private Institutions

Private institutions in food safety standards are the initiatives that focus on food safety (including bio-safety) and sustainable development (including biodiversity) by using different tools geared towards issues of quality control, process verification, traceability and labeling. Some of these private food safety institutions include Marine Stewardship Council (MSC), GlobalGAP (GAP-Good Agricultural Practices), Global Food Safety Initiatives (GFSI), Nature's Choice, FilièresQualité, Field to Fork, British Retail Consortium (BRC), International Food Standard (IFS), NGO (Rainforest Alliance), Global Standards, and Tesco's Nature's Choice private.

Due to the market failures and the lack of consumers' confidence on existing public regulatory bodies in the 1990's, non-state governance initiatives for standard-setting and certification started to emerge (Abbot & Snidal 2001). Private standards are facilitating global food safety issues, and there are indications that they have enjoyed acceptance despite the co-existence of public institutions. Private food safety (PFS) facilities respond to markets by reacting to consumer perception on food safety rather than playing the role of trade facilitators such as the SPS agreement. Also they create the avenues for producers and retailers competing in upgrading and ensuring quality in consumer food. Again, PFS mechanisms are reviving and returning public trust to producers and retailers, hence directly facilitating business development. In addition, although some of its measures have been initiated in regions such as Europe, state-determined food standard systems have sometimes failed to trace the origin of diverse and intensely circulated products due to globalization which has had reverse effects on food safety. PFS schemes are addressing this problem by maintaining labeling and traceability systems. Furthermore, increased political and economic demands for more effective food safety controls have left nation-states struggling to regulate food safety and quality practices, allowing alternate mechanisms to proliferate (García *et. al.* 2007). Most of the states are struggling because of gaps in regulatory systems and lack of implementation equipment, resources and manpower. In such situations, PFSs are playing complementary roles for public food safety, and helping to decrease public reliance on states food safety mechanisms.

Despite that PFSs have become popular, they have faced some criticisms. First, although private standard compliance is not mandatory, large retailers subscribing to PFSs are becoming gatekeepers to



the global food markets. This creates some form of domination and enhances monopoly. This may result in harsh cost effects on consumers and may create economic disadvantage for small retail outlets. Producers and suppliers also become subject to the whims and caprices of large dominant retailers in the PFS schemes (Grace 2006).

Second, complying with different, sometimes several, private standards may be burdensome for least or newly industrial economies around the world. PFS systems may require significant upgrades in production facilities which may incur much cost for certification, labeling and inspection from reviewers. As those countries largely depend on incomes from exportation of food products, the compliance-related costing and failure to comply may have direct impacts on their development.

Third, PFS institutions are mostly created out of mutual agreements, voluntarily participation, and collaborative partnerships, but rarely with statutory legal mandate. The private standard setter, in many cases, may not have the procedure for advance notification while embarking on the adoption and modification of standards which may affect market access on a large scale and require substantial changes in existing production facilities. On the other hand, private standard setters are self-designed and regulated and sometimes potentially conflicting with other private, local or state food safety regulations, potentially causing difficulty for dispute handling. Parties with complaints may then have to 'surrender' to private standard procedures to keep up access in the market.

Fourth, debates on the authority and legitimacy of PFS are still ongoing. There are no clear positions regarding how democratic their decision making systems are. It is possible that their decision making systems are influenced by private parties having biased national interests. It is also possible that the interest of some parties and nationalities are excluded in this process. Also, due to the institutional design and profiteering potentials of private actors, their accountabilities and responsibilities to stakeholders may be questionable.

### **3. Complexity of public- private standards**

Sometimes, private standards overlook government food safety regulations. Besides, SPS has some guidelines for states' food standard but not clarified role for PFS and this may create more confusion and complexity in global food safety. The European Commission argued that they would not object if PFSs exceed the SPS, and then the WTO acknowledged that the private standards were often much



more demanding (World Trade Organisation 2005). This WTO's acknowledgement may be a way of buttressing the reliability of PFSs.

PFSs are becoming potential threats to the legitimacy of public food safety institutions. Public and private standard in food safety are sometimes potentially competing and conflicting with several regulators at the international and transnational levels, especially when exporting-countries' suppliers are unaware of the nature, source or process of food safety regulation in an importing country. Such uncertainties have raised concerns which are crucially important but under-analyzed (Kingbury *et. al.* 2005). Also, although complying with PFS is not mandatory in international trade, suppliers and producers seem ready to comply with PFS to gain access in specific markets due to the large retail outlets' involvement in PFS. These complexities sometimes create dispute, clash of interests and harm especially to developing countries' economic advancement.

#### **4. Mitigating the Problems of Private Standard**

Private standard initiatives could work as complementary systems with public standard systems. Although, ensuring public health is primarily the responsibility of public authorities, emerging private institutions are becoming inevitable due to the challenges and limitations that public institutions face. Besides, PFSs are contributing to the modernization of industries in developing countries, fostering foreign direct investment, helping to solve food safety issues in industrialized countries, allowing producers to enter into more stable business relationships, growing awareness and demand of consumers for extra precautions, and creating decreased reliance of consumers on public authorities.

Having recognized the importance of PFSs, several mitigating initiatives may be necessary to improve them. First, there may be need to acknowledge and foster the positive contribution of private standards by public authorities such as SPS agreement of WTO. For global governance actors to achieve this, public authorities could restructure their institutions and incorporate PFSs as complementary institutions for global food safety governance. Second, safeguards should be put in place by creating an independent body to monitor the substance of private standards and facilitate dispute settlement. Third, private standard maintenance basically affects smallholders but the standards have positive impacts for compliant producers. So, actors can support smallholders by initiating public



or mutual subsidization mechanisms by providing information, financial aid and technical support to upgrade their facilities, or reduce product certification fees for smallholders. Fourth, complying with several standards for the same market, sometimes conflicting and confusing, is costly and trade-restrictive. To combat this problem, SPS agreements should have precise harmonization strategies. A benchmark standard may initiate allowing producers that comply with one standard to be deemed compliant with all the other standards. But this initiation should not block the competition with each other for higher levels of food safety. Fifth, in global governance, the public are not precisely identified, hence making it difficult to determine how democratic and legitimate PFSs are in food governance. The recognition and validation of PFSs norms and consensus by state and public authorities could help enhance private standard legitimacy.

## 5. Conclusions

Food safety is a very sensitive and responsive issue. Public policy should govern and emphasize all-out effort on public food safety. Due to different circumstances and reasons this paper has already discussed, private standards' institutional emergence has become inevitable. There are different arguments in favor and against both public and private standards in food safety. Basically, state failure to retain consumer trust, producers and retailers groups' market response, pressures from interest groups and globalization have fostered the emergence of PFSs. But debates are arising regarding their structures, changes in standard policy decision, barriers to their development, and the issues of how democratic or legitimate they are.

Still, the existence and acceptability of private standards are noticed and acknowledged by WTO, European Commission and other stakeholders all over the world. Therefore, the existing public structures may need to be newly configured for global regulation of free trade and food safety, incorporating and specifying the role and procedures of private standards in global food safety governance.



## References

- Abbot K. & Snidal D. (2001). International 'standards' and international governance. *Journal of European Public Policy*, 3 (8), 345-370.
- Casey, D. (2009). Three puzzles of private governance: GlobalGAP and the regulation of food safety and quality. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1515702](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1515702).
- Centre for Disease Control and Prevention. (2011). Estimates of foodborne illness in the United States. Retrieved from <http://cdc.gov/foodborneburden/2011-foodborne-estimates.html>.
- Codex Alimentarius Commission. (2011). Codex alimentarius welcome. Retrieved from [http://www.codexalimentarius.net/web/index\\_en.jsp](http://www.codexalimentarius.net/web/index_en.jsp).
- Grace Chia-Hui Lee. (2006). Private food standards and their impacts on developing countries. Retrieved from [http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAA&url=http%3A%2F%2Ftrade.ec.europa.eu%2Fdoclib%2Fdocs%2F2006%2Fnovember%2Ftradoc\\_127969.pdf&ei=92NCVfeYNMuogwTB-oHYDg&usq=AFQjCNHCwE6Vu7jzyxcr1mcqkp3BLG1jlQ](http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAA&url=http%3A%2F%2Ftrade.ec.europa.eu%2Fdoclib%2Fdocs%2F2006%2Fnovember%2Ftradoc_127969.pdf&ei=92NCVfeYNMuogwTB-oHYDg&usq=AFQjCNHCwE6Vu7jzyxcr1mcqkp3BLG1jlQ).
- Garcia M., Fearne, A., Caswell, J. A. & Henson, S. (2007). Co-regulation as a possible model for food safety governance: Opportunities for public-private partnerships. *Food Policy*, 32(3), 299-314.
- Hatanaka, M. & Busch, L. (2008). Third-party certification in the global agrifood system: An objective or socially mediated governance mechanism? *Sociologia Ruralis*, 48(1), 73-91.
- Henson, S. & Caswell, J. (1999). Food safety regulation: An overview of contemporary issues. *Food Policy*, 24(6), 589-603.
- Henson, S. & Humphrey, J. (2010). Understanding the complexities of private standards in global agri-food chains as they impact developing countries. *Journal of Development Studies*, 46(9), 1628-1646.
- Kingsbury, B., Krisch, N., & Stewart, B.R. (2005). The emergence of global administrative law. Retrieved from <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1361&context=lcp>.
- McMichael, P. (2000). The power of food, agriculture and human values, 17(1), 21-33.
- Niu, H. (2006). A comparative perspective on the international health regulations and the World Trade Organization's agreement on the application of Sanitary and Phytosanitary Measures. *Asian Journal of WTO & International Health Law and Policy*, 1(2), 513-542.
- Silverglade B. A. (2002). The WTO agreement on sanitary and phytosanitary measures: weakening food safety regulations to facilitate trade? Retrieved from [https://cspinet.org/reports/codex/dutch\\_wto.html](https://cspinet.org/reports/codex/dutch_wto.html).
- Smythe, E. (2009). In whose interests? Transparency and accountability in the global governance of





Food: Agribusiness, the codex Alimentarius, and the World Trade Organization. In Corporate power in global agrifood governance. Retrieved from <http://www.universitypressscholarship.com/view/10.7551/mitpress/9780262012751.001.0001/upo-9780262012751-chapter-4>.

Taylor, A. L. (1992). Making the World Health Organization work: A legal framework for universal access to the conditions for health. *American Journal of Law and Medicine*, 18(4), 301-346.

Wouters, J., Marx, A., & Hachez, N. (2008). Private standards, global governance and transatlantic cooperation: The case of global good safety governance. Retrieved from [https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjAC&url=https%3A%2F%2Fghum.kuleuven.be%2Fggs%2Fprojects%2Fbiosafety\\_biodiversity%2Fpublications%2Fwouters-marx-hachez\\_final.pdf&ei=pmdCVcGvE4mkNrOTgHA&usg=AFQjCNGVAW-PIUdZI4RHNEAAO20IA2-SCg](https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjAC&url=https%3A%2F%2Fghum.kuleuven.be%2Fggs%2Fprojects%2Fbiosafety_biodiversity%2Fpublications%2Fwouters-marx-hachez_final.pdf&ei=pmdCVcGvE4mkNrOTgHA&usg=AFQjCNGVAW-PIUdZI4RHNEAAO20IA2-SCg).

World Health Organization Food Safety Programme. (1999). Food safety: An essential public health issue for the new millennium. Retrieved from <http://apps.who.int/iris/handle/10665/65971>.

World Trade Organisation. (2005). World Trade Report 2005: Exploring the links between trade, standards and the WTO.

2005, Retrieved from [https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Fres\\_e%2Fbooksp\\_e%2Fanrep\\_e%2Fworld\\_trade\\_report05\\_e.pdf&ei=NmlCVfCkBMq1sQTqg4CIBA&usg=AFQjCNEDBM7xLLgTeWQdHB167LLUc2r8\\_w&bvm=bv.92189499,d.cWc](https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Fres_e%2Fbooksp_e%2Fanrep_e%2Fworld_trade_report05_e.pdf&ei=NmlCVfCkBMq1sQTqg4CIBA&usg=AFQjCNEDBM7xLLgTeWQdHB167LLUc2r8_w&bvm=bv.92189499,d.cWc).

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