

# Private-sector standards as technical barriers in international trade in goods : in search of WTO disciplines

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## Propositions relating to the dissertation

### *Private-Sector Standards as Technical Barriers in International Trade in Goods: In Search of WTO Disciplines*

by Arkady Kudryavtsev

1. WTO Members are fully responsible for their actions which require or provide serious incentives for private entities to act or not to act in certain ways in violation of the relevant WTO legal disciplines, for example by reducing the competitive opportunities for foreign products or supporting import or export bans.
2. In cases where the development, adoption and application of a private-sector standard receives sufficient governmental involvement or incentives provided by a WTO Member, this private conduct shall be attributed to the Member.
3. The “due diligence” obligations provided in the TBT Agreement and the SPS Agreement requiring WTO Members to take available “reasonable” measures with respect to non-governmental bodies or entities should be viewed as obligations of conduct aimed at providing the necessary flexibility in dealing with the complex issue of Members’ responsibility for non-governmental conduct.
4. The determination of which “reasonable” measures are available to a WTO Member to discipline the development, adoption and application of private-sector standards shall be made on a case-by-case basis depending on the relevant circumstances, including the level of governmental involvement or incentives provided for the operation of such standards, as well as the level of development and technical capacity of the Member.
5. In the majority of developed and developing countries with free market economies, governments are confined to a rather narrow set of options with regard to influencing private entrepreneurial behaviour, and these options are usually limited to the protection of important societal objectives, such as public health, public morals, consumer rights, and market competition.
6. Those private-sector standards whose development, adoption and application do not receive meaningful governmental support or incentives, most likely, are not covered by the existing norms of WTO law.
7. Further development of the WTO rules with regard to private-sector standards appears to be desirable in order to address the challenges posed by the proliferation of the use of private-sector standards; and in this regard, the adoption of a voluntary WTO code of good practices specially devoted to private standard-setting seems to be a useful and realistic step.
8. It would be odd if a “technical regulation” under the TBT Agreement, while covering labelling addressing non-product-related processes and production methods (npr-PPMs), does not cover npr-PPM-based requirements *per se*. The WTO dispute settlement practice, however, seems to go in this direction.
9. According to the Israeli diplomat and politician Abba Eban, “consensus is what many people say in chorus but do not believe as individuals”. Hence, the TBT Agreement rightly covers also those standards that are not based on consensus.
10. As famously quoted by Prof. John H. Jackson, the US Senator Eugene D. Millikin warned that “anyone who reads GATT is likely to have his sanity impaired”. Although this PhD dissertation discusses a number of important GATT provisions, the author sincerely hopes that the sanity of its readers will not be affected.