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978-1-107-12833-0 - The Law, Economics and Politics of International Standardisation

Edited by Panagiotis Delimatsis

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## THE LAW, ECONOMICS AND POLITICS OF INTERNATIONAL STANDARDISATION

In an era of increased reliance on private regulatory bodies and globalised economic activity, standardisation is the field in which politics, technical expertise and strategic behaviour meet and interact. International standard-setting bodies exemplify the rise of transnational governance and the challenges that it brings in relating to institutional choice, legitimacy and procedural and substantive fairness or transparency. This book takes a more empirically based approach, focusing on the mechanics of international standard-setting. It constitutes a multidisciplinary inquiry into the foundations of international standard-setting, an empirically under-researched yet important area of international informal law-making. The contributors expertly examine the peculiarities of international standardisation in selected issue areas and legal orders and shed light on the attributes of international standard-setters, allowing comparisons among standard-setting bodies with a view to identifying best practices and improving our understanding of standardisation processes.

PANAGIOTIS DELIMATIS is Professor of European and International Trade Law and Director of the Tilburg Law and Economics Center (TILEC) at Tilburg University, the Netherlands. He is a renowned expert on trade and regulatory issues relating to services industries, technical barriers to trade, financial regulation and energy. He has published extensively in top European and international refereed journals.

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This edited volume is a collection of the papers first presented at an international, multidisciplinary conference on international standardisation that took place in Tilburg, the Netherlands, on 7–8 November 2013. The conference was organised by the Tilburg Law and Economics Center (TILEC), a Center of Excellence at Tilburg University active in the interdisciplinary study of economic activity, on the occasion of its tenth anniversary. In line with TILEC tradition, a mix of experts, academics, policy officials, practitioners and regulators joined to assist in asking the right questions and addressing the issues identified as thoroughly as possible. The main objective of the conference was to improve our knowledge about and understanding of standard-setting processes in various legal orders and organisations, whether public, private or hybrid. Of particular interest for the organisers was the identification of any common patterns in the mechanics of standards development in the areas under discussion; the conditions and circumstances that may change the dynamics in some issue areas but not in others; and the traits of the new generation of standard-setters and the standards they produce in such diverse areas as finance, sustainable manufacturing or the information and communication technology markets.

TILEC has been generating cutting-edge research in the areas of intellectual property, standardisation and innovation at the borders of law and economics since 2006, which became possible due to multiyear sponsorship agreements that TILEC signed with Qualcomm and Microsoft. The cooperation with Qualcomm in particular has allowed TILEC researchers to have a better grasp of industry's concerns in the standard-setting processes. The research programme associated with these agreements is always executed in line with the rules of academic independence of the Royal Academy of Arts and Sciences.

This volume would not have seen the light of the day without the dedication, patience and relentless efforts of its contributors who had to revise their papers several times to serve the coherence of this book.

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*Panagiotis Delimatsis  
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## ABBREVIATIONS

AB	Appellate Body
ACP	African, Caribbean, and Pacific States
ADB	Asian Development Bank
ADI	Acceptable Daily Intake
AFNOR	Association Française de Normalisation
AFTA	ASEAN Free Trade Area
AIP	Apparel Industry Partnership
ALADI	Association Latino-Américaine d'Intégration
ANSI	American National Standards Institute
APEC	Asia-Pacific Economic Cooperation
ASC	Accredited Standards Committee
ASEAN	Association of South-East Asian Nations
ASME	American Society of Mechanical Engineers
ATM	Automated teller machine
ATS	Alien Tort Statute
AVBWasserV	Verordnung über Allgemeine Bedingungen für die Versorgung mit Wasser
BCBS	Basel Committee on Banking Supervision
BEREC	Body of European Regulators for Electronic Communications
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
BIS	Bank for International Settlements
BITs	Bilateral investment treaties
BSI	British Standards Institution
CAC	Codex Alimentarius Commission
CACM	Central American Common Market
CAFTA	Central America FTA
CCEXEC	Codex Executive Committee
CCFA	Codex Committee on Food Additives
CCGP	Codex Committee on General Principles
CCM	Cloud Controls Matrix

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## LIST OF ABBREVIATIONS

CCPs	Central Counterparties
CCRVDf	Codex Committee on Residues of Veterinary Drugs in Foods
CCSL	Cloud Certification Schemes List
CEBR	Centre for Economic and Business Research
CEN	Comité Européen de Normalisation
CEN/ISSS/CENELEC	Comité Européen de Normalisation Électrotechnique
CEO	Chief executive officer
CEPII	Centre d'Études Prospectives et d'Informations Internationales
CEPT	Common Effective Preferential Tariff
CESR	Committee of European Securities Regulators
CFTC	Commodity Futures Trading Commission
CGF	Consumer Goods Forum
CGFS	Committee on the Global Financial System
CICICFTC	Interim Compliant Identifier
CIE	Centre for International Economics
CISI	Chartered Institute for Securities and Investment
CJEU	Court of Justice of the European Union
CoC	Chain-of-custody
COMESA	Common Market for Eastern and Southern Africa
COMTRADE	United Nations Commodity Trade Statistics Database
COOL	Certain Country of Origin Labeling
COPOLCO	ISO Committee on Consumer Policy
CPSS	Committee on Payment and Settlement Systems
CSA	Cloud Security Alliance
CSD	Central securities depository
CSR	Corporate social responsibility
CTF	Codex Trust Fund
CUP	China UnionPay
CWA	CEN Workshop Agreement
DAPIX	Working Party on Information Exchange and Data Protection
DC	Developing countries
DFID	Department for International Development
DG	Directorate General of European Commission
DIIS	Danish Institute for International Studies
DIN	Deutsches Institut für Normung
DIS	Draft International Standard
DIVX	Digital Video Express
DMS	Database Management Software
DNT	Do not track
DRAM	Dynamic random-access memory

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DS	Dispute settlement
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
DTCC	Depository Trust and Clearing Corporation
DTI	UK Department of Trade and Industry
DVGW	Deutsche Vereinigung des Gas – und Wasserfaches
EAC	East African Community
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECN	European Competition Network
ECOFIN	Economic and Financial Affairs Council
ECR	European Court Reports
EEA	European Economic Area
EEA	The European Environment Agency
EFSA	European Food and Safety Authority
EFTA	European Free Trade Association
EIOPA	European Insurance and Occupational Pensions Authority
EIPR	European Intellectual Property Review
EITI	Extractive Industries Transparency Initiative
ENISA	European Union Agency for Network and Information Security
EP	European Parliament
EPO	European Patent Office
EPS	Electronic payment services
ERGEG	European Regulators Group for Electricity and Gas
ESMA	European Securities and Markets Authority
ESME	European Securities Markets Expert Group
ESO	European Standardisation Organisation
ETNO	European Telecommunications Network Operators Association
ETRI	Electronics and Telecommunications Research Institute
ETSG	European Trade Study Group
ETSI	European Telecommunications Standards Institute
EU	European Union
EUI	European University Institute
EURAS	European Academy for Standardization
FAO	Food and Agriculture Organization
FATF	Financial Action Task Force on Money Laundering
FDA	US Food and Drug Administration
FDI	Foreign Direct Investment
FDIS	Final Draft International Standard

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FEEDAP	EFSA Panel on Additives and Products or Substances used in Animal Feed
FESCO	Forum of European Securities Commissions
FIN-USE	Forum of User Experts in the Area of Financial Services
FIX	Financial Information Exchange
FLA	Fair Labour Association
FLO	Fairtrade Labelling Organization
FOKUS	Fraunhofer Institute for Open Communication Systems
FpML	Financial Products Mark-up Language
FRAND	Fair, Reasonable, and Non-Discriminatory
FSAP	Financial Sector Assessment Program
FSAP	Financial Services Action Plan
FSB	Financial Stability Board
FSC	Forest Stewardship Council
FSF	Financial Stability Forum
FSSAs	Financial Sector Stability Assessments
FTC	US Federal Trade Commission
FVO	Food and Veterinary Office
G20	Group of Twenty
GAP	Good Agricultural Practices
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GEF	Global Environmental Facility
GFSI	Global Food Safety Initiative
GHP	Good Hygienic Practices
GiZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GMOs	Genetically modified organisms
GMP	Good Manufacturing Practices
GPL	General public license
GRI	Global Reporting Initiative
HACCP	Hazard Analysis and Critical Control Point
HIPAA	Health Insurance Portability and Accountability Act
HS	Harmonized System
HTML	Hyper Text Markup Language
IAASB	International Auditing and Assurance Standards Board
IADI	International Association of Deposit Insurers
IAF	International Accreditation Forum
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IASC	International Accounting Standards Committee

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IATA	International Air Transport Association
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technology
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IETF	Internet Engineering Task Force
IFAC	International Federation of Accountants
IFIs	International Finance Institutions
IFRS	International Financial Reporting Standards
IGO	Inter-Governmental Organisation
IIA	International Investment Agreement
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IMRL	International Maximum Residue Level
IMS	Identity Management Systems
IOP	Interoperability, Data Portability, and Reversibility
IOSCO	International Organisation of Securities Commissions
IP	Intellectual property
IPC	International Patent Classification
IPPC	International Plant Protection Convention
IPRs	Intellectual Property Rights
IPSE	Initiative for Privacy Standardisation in Europe
ISEA	Inter-Society for the Electronic Arts
ISEAL	International Social and Environmental Accreditation and Labeling
ISIN	International Securities Identification Number
ISO	International Organisation for Standardisation
ISO SC	ISO subcommittees
ISSB	International Standard-Setting Body
ISSS	Information Society Standardisation System
ISTPA	International Security, Trust, and Privacy Alliance
IT	Information Technology
ITC	International Trade Centre
iTIP	WTO Trade Intelligence Portal
ITU	International Telecommunication Union
IWGDPT	International Working Group on Data Protection in Telecommunications
JECFA	Joint WHO/FAO Expert Committee on Food Additives
JEDEC	Joint Electron Device Engineering Council

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JEMRA	Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment
JISC	The Japanese Industrial Standards Committee
JMPR	Joint FAO/WHO Meetings on Pesticides Residues
JORF	Journal Officiel de la République Française
JTC	Joint Technical Committee
KPCS	United Nations Kimberly Process Certification Scheme
LDCs	Least developed countries
LEI	Legal Entity Identifier
LIBE	Committee on Civil Liberties, Justice, and Home Affairs
MAST	Multi-Agency Support Team
MIGA	Multilateral Investment Guarantee Agency
ML	Maximum limits
MNC	Multinational company
MNE	Multinational enterprise
MoU	Memorandum of Understanding
MRL	Maximum Residue Level
MSC	Marine Stewardship Council
MSS	Management Systems Standardization
NAFTA	North American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NASA	National Aeronautics and Space Administration
NASDAQ	National Association of Securities Dealers Automated Quotations
NBSIR	National Bureau of Standards Information Report
NCBA	US National Cattlemen's Beef Association
NGO	Non-Governmental Organization
NIS	Network and Information Security
NIST	National Institute of Standards and Technology
NP	New Work Item Proposal
NPEs	Non-Producing Entities
NRC	US National Research Council
NTBMM	NTB Monitoring Mechanism
NTBs	Non-Tariff Barriers
NTMs	Non-Tariff Measures
OASIS	Organization for the Advancement of Structured Information Standards
OCF	Open Certification Framework
ODCA	Open Data Center Alliance
OECD	Organisation for Economic Co-operation and Development
OIE	World Organization for Animal Health
OJ	Official Journal of the European Union

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OTC	Over-the-counter
P3P	Platform for Privacy Preferences
PDCA	'Plan-Do-Check-Act'
PEFC	Program for the Endorsement of Forest Certification
PET	Privacy-enhancing technology
PIA	Privacy impact assessment
PIN	Personal identification number
PIOB	Public Interest Oversight Board
PMS	Privacy Management Systems
PPMs	Production and Process Methods
PSE	Paris School of Economics
PTA	Preferential Trade Agreement
QRs	Quantitative restrictions
R&D	Research and development
RAND	Reasonable and non-discriminatory
RASFF	Rapid Alert System for Food and Feed
RFID	Radio-frequency identification
RMB	Renminbi
ROC	Regulatory Oversight Committee
ROSCs	Reports on the Observance of Standards and Codes
RTA	Regional trade agreement
S&DT	Special and Differential Treatment
SADC	South African Development Community
SAFTA	South Asian Free Trade Area
SAGE	Strategic Advisory Group on the Environment
SAGISO	Strategic Advisory Group on Social Responsibility
SAI	Social Accountability International
SC	Supreme Court of the United States
SCORE	Stockholm Venter for Organizational Research
SCVPH	Scientific Committee on Veterinary Measures relating to Public Health
SD	Sustainable development
SDO	Standards developing organisation
SEC	US Securities and Exchange Commission
SEP	Standard-Essential Patent
SI	International System of Units
SLA	Service level agreements
SMEs	Small and medium-sized enterprises
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SR	Social responsibility
SRI	Socially responsible investment

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SSB	Standard-setting body
SSO	Standard-setting organisation
STDF	Standards and Trade Development Facility
STP	Straight-through processing
STS	Science, Technology, and Society
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TBT	Agreement on Technical Barriers to Trade
TC	ISO Technical Committee
TFEU	Treaty on the Functioning of the European Union
TIA	Telecommunications Industry Association
TILEC	Tilburg Law and Economics Center
TMB	ISO Technical Management Board
TMCMSADC	Trade Monitoring and Compliance Mechanism
TNC	Transnational corporation
TPP	Trans-Pacific Partnership
TPRC	Telecommunications Policy Research Conference
TQM	Total quality management
TRs	Technical regulations
TTIP	Transatlantic Trade and Investment Partnership
UKFSA	UK Food Safety Act
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNECE	UN Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFSS	United Nations Forum on Sustainability Standards
UNIDO	United Nations Industrial Development Organization
USDA	US Department of Agriculture
VCLT	Vienna Convention on the Law of Treaties
VSS	Voluntary Sustainability Standards
VTDF	Voluntary Technology Dialogue Framework
W-CDMA	Wideband Code Division Multiple Access
W3C	World Wide Web Consortium
WB	World Bank
WEF	World Economic Forum
WG	ISO Working Group
WHA	World Health Assembly
WHO	World Health Organization
WR	ISO Working Report
WS/DPP	CEN/ISSS Data Protection and Privacy Workshop
WSC	World Standards Cooperation



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WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WTOA	Agreement Establishing the World Trade Organization
WWF	World Wildlife Fund
XBRL	eXtensible, Business Reporting language
XML	Extensible Markup Language