

Craftbridge University Press
Andrea Garting Silear falternational Standardization and the Agreement on Technical Barriers to
Frontmatter
More Information

INTERNATIONAL STANDARDIZATION AND THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

International Standardization and the Agreement on Technical Barriers to Trade examines the international standardization system generally, with a specific focus on some of the bodies within this system, along with their rules and procedures. It also examines – and questions – the lack of definition regarding several features related to the system, notably an international standardizing body (ISB) and international standards in the Agreement on Technical Barriers to Trade (TBT). Andrea Barrios Villarreal, who has been involved in standardization activities for more than seven years, provides a unique and in-depth analysis that will be useful to scholars, students and practitioners. This illuminating work is a welcome addition to the international economic law literature and should be read by anyone with an interest in the interaction between trade law and international standardization.

Andrea Barrios Villarreal has a PhD in international law from the Graduate Institute of International and Development Studies in Geneva. She has also worked on standardization issues for the Mexican government, international organizations and in the private sector, including roles as director for International Standardization at the Mexican National Standards Body and chair of the Codex Committee for Fresh Fruits and Vegetables.





Enabling University Press Andrea of The Press Andrea of The Press of T

International Standardization and the Agreement on Technical Barriers to Trade

ANDREA BARRIOS VILLARREAL





Trade Cambridge University Press \$756124 8614938 18a11 19 Perhational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781108474368 DOI: 10.1017/9781108591348

© Andrea Barrios Villarreal 2018

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2018

Printed in the United States of America by Sheridan Books, Inc.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data NAMES: Barrios Villarreal, Andrea, 1981–, author.

TITLE: International standards and the Agreement on Technical Barriers to Trade / Andrea Barrios Villarreal.

DESCRIPTION: New York: Cambridge University Press, 2018. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2018014950 | ISBN 9781108474368 (hardback)

SUBJECTS: LCSH: Standardization - Law and legislation. | Foreign trade regulation. | Tariff -Law and legislation. | BISAC: LAW / International.

Classification: LCC K4640.S72 B37 2018 | DDC 343.07/5-dc23 LC record available at https://lccn.loc.gov/2018014950

ISBN 978-1-108-47436-8 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



Trade Cambridge University Press
Andrea Garrios Villar Enternational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

To Chelo, Pedro and Adriana





Trade Cambridge University Press
Andrea Garrios Villar Enternational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

Contents

List of Tables pa		bage xi		
List	of A	Abbre	viations and Acronyms	xii
	In	trodu	action	1
I	Tł	ne Int	ternational Standardization System	8
	1	A Br	rief History of International Standardization	8
	-	1.1	The Inventions of the Nineteenth Century and the First	
			Intergovernmental Standardizing Bodies	8
		1.2	The Electrotechnical Societies and the Creation of the IEC	9
		1.3	The Interwar Period and the First Wave of National Standards	
			Bodies	10
		1.4	The Cost of the Second World War and the Creation of ISO	11
		1.5	The United Nations Era	12
		1.6	Regional Standards Bodies and the Second Wave of National	
			Standards Bodies	15
		1.7	The Emergence of Private Standards and Sustainability	
		,	Standards	16
		1.8	The International Standardization System Today	18
	2	The	Structure and Operation of International Standardizing Bodies	18
		2.1	Membership	19
		2.2	Governance and Structure	28
		2.3	Standard Development Process	38
		2.4	Decision-Making	42
		2.5	Access to Standards	45
		2.6	Policies for Enhancing the Participation of Developing	
			Countries	47
		2.7	Transparency	55
	3	Con	nclusions	57



Trade University Press Andrea 6317405 Villar Falternational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

viii Contents

II	In	ternational Standards as Part of International Law	58
	1	The Place of International Standards in International Law	58
	2	2 Sources of International Law under Article 38 of the Statute of the	
		International Court of Justice	59
		2.1 International Conventions	59
		2.2 Customary Law	60
		2.3 General Principles and Judicial Decisions, and the Teaching of	
		the Most Highly Qualified Publicists	61
		2.4 International Standards as a Traditional Source of International	
		Law	61
	3	Soft Law	62
		3.1 International Standards as Soft Law	63
	4	Global Governance	65
	5	New Theories in International Law	66
		5.1 The Global Administrative Law Project	66
		5.2 The International Public Law Project	68
		5.3 The Informal International Lawmaking Project	69
	_	5.4 The Transnational Private Regulation Project	74
	6	Conclusions	76
III	St	andards from the Economic Perspective	78
	1	Global Public Goods and International Standards	79
		1.1 Public Goods	79
		1.2 Global Public Goods	80
		1.3 International Standards as Global Public Goods	81
	2	Classification of Standards from the Economic Perspective	82
		2.1 Compatibility and Interoperability Standards	82
		2.2 Safety and Quality Standards	83
		2.3 Variety Standards	84
		2.4 Information and Measurement Standards	84
	3	Regulatory Heterogeneity	85
		3.1 Structure-Based Standards	85
		3.2 Different Optimal Level of Protection	86
	4	The Impact of Standards on Trade	86
		4.1 Standards as Trade Facilitators or as Trade Barriers	87
	5	Standards, Innovation and Growth	93
	6	Harmonization and Mutual Recognition	95
		6.1 Does Mutual Recognition and Equivalence Promote Trade More than Harmonization?	06
	_	Conclusions	96
	7	Concrusions	98



Trade University Press Andrea 6317405 Villar Falternational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

		Contents	ix
IV	In	nternational Standardization under the WTO	100
	1	The WTO Framework for International Standardization and Its	
	-	Negotiation History	100
		1.1 The Nonexistence of International Standardization in the	100
		GATT	101
		1.2 The Standards Code	102
		1.3 The TBT Agreement	109
		1.4 The Triennial Reviews and the TBT Committee's Decision	115
		1.5 Conclusions	117
	2	The Definitions of "International Standardizing Body" and	,
		"International Standard" in the TBT Agreement	118
		2.1 The 1973 Draft of the Standards Code	118
		2.2 The ECE/ISO Document	119
		2.3 Comparison between the 1973 Draft and the ECE/ISO	
		Definitions	124
		2.4 Application of the ECE/ISO Definitions to the Standards Code	125
		2.5 The Definitions of "International Standardizing Body" and	
		"International Standard" in the Standards Code	126
		2.6 The Definitions of "International Standardizing Body" and	
		"International Standard" in the TBT Agreement	127
		2.7 Conclusions	134
	3	Definition of "International Standardizing Body" in US-Tuna II	135
		3.1 The Arguments of the Parties	136
		3.2 The Report of the Panel	137
		3.3 The Report of the Appellate Body	140
		3.4 Proposed Definition of ISB	148
		3.5 Conclusions Defection of "Leterational Standard" in EC. Soutions and	149
	4	Definition of "International Standard" in EC–Sardines and	
		US-Tuna II	149
		4.1 The European Communities Regulation for Sardines	150
		4.2 The Arguments of the Parties The Parel and the Appellate Padu Penarte	150
		4.3 The Panel and the Appellate Body Reports4.4 The Loopholes in the Assessment by the Panel and the	151
		4.4 The Loopholes in the Assessment by the Panel and the Appellate Body	161
		4.5 Proposed Definition of "International Standard"	165
		4.6 Conclusions	165
	5	The Principles in the Decision	166
	,	5.1 The Decision as a Subsequent Agreement among the Parties	166
		5.2 Interpretation of the Principles in the Decision	168
		5.3 Shortcomings of the Principles	184
		5.4 Conclusions	184
	6	The Missing Step in the Definition of "International Standard"	185
	7	Conclusions	188



Contents

V		ractical Application of the Concept of an International andardizing Body	189	
	1	Compliance with the Definition of "International Standardizing		
	-	Body"	190	
		1.1 Body	190	
		1.2 Recognized Activities in Standardization	191	
		1.3 Open	192	
		1.4 To the Relevant Bodies of at Least All WTO Members	194	
		1.5 Conclusions	195	
	2	Compliance with the Principles and Procedures Established in the		
		TBT Committee's Decision	196	
		2.1 The Codex Alimentarius Commission	196	
		2.2 The Working Party on Agricultural Quality Standards	205	
		2.3 ISO	211	
		2.4 The IEC	226	
		2.5 The ASTM	232	
		2.6 The FSC	237	
	3	Conclusions	² 44	
VI	Ρı	ractical Application of the Concept of International Standard: Case		
		udies	246	
	_	The Standardination of the OOVMI Format in the ISO/IEC ITC.	-	
	1	The Standardization of the OOXML Format in the ISO/IEC JTC1	246	
		1.1 Background1.2 OOXML in the ISO/IEC JTC1	246 248	
		1.3 Is the ISO/IEC 29500 an International Standard?	253	
		1.4 Economic Considerations of the OOXML	258	
		1.5 Final Remarks	259	
	2	The Standardization of Natural Mineral Waters in the Codex	- 29	
	-	Alimentarius Commission	260	
		2.1 Background	260	
		2.2 Transformation of the Natural Mineral Standard into		
		a Worldwide Standard	262	
		2.3 Is the Codex Standard on Natural Mineral Waters an		
		International Standard?	265	
		2.4 Economic Considerations of the Standard on Natural Mineral		
		Waters	268	
		2.5 Final Remarks	269	
	3	Conclusions	269	
	G	eneral Conclusions	271	
Sele	Select Bibliography 270			
1114	Index 30°			



Trade Cambridge University Press
Andrea Garrios Villar Enternational Standardization and the Agreement on Technical Barriers to Frontmatter

More Information

Tables

1	Membership in standardizing bodies	page 20
2	Stages in the development of standards	39
3	Definitions in the negotiating documents, the Standards Code and the	
	TBT Agreement	120
4	Comparison between the definitions in the TBT Agreement and in the	;
	ISO/IEC Guide 2	128
5	The components of the principles in the Decision	181



Traderidge University Press Andrea of the Agreement on Technical Barriers to Frontmatter

More Information

Abbreviations and Acronyms

ABNT Associação Brasileira de Normas Técnicas AENOR Asociación Española de Normas y Certificación

AFNOR Association Française de Normalisation

AIDCP Agreement on the International Dolphin Conservation Program

ANSI American National Standards Institute

AOSM Arab Organization for Standardization and Metrology

ARSO African Organisation for Standardisation
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials

BIC Bureau International des Containers et du Transport Intermodal

BIPM Bureau International des Poids et Mesures

BISFA Bureau International pour la Standardisation des Fibres

Artificielles

BRM Ballot Resolution Meeting
BSI British Standards Institution
CAB Conformity Assessment Board
CAC Codex Alimentarius Commission

CANENA Consejo de Armonización de Normas Electrotécnicas de las

Naciones en las Américas

CASCO Conformity Assessment Committee

CB Council Board

CCCF Codex Committee on Contaminants on Foods

CCEXEC Codex Executive Committee

CCFA Codex Committee on Food Additives

CCFFP Codex Committee on Fish and Fishery Products CCFFV Codex Committee on Fresh Fruits and Vegetables

CCFH Codex Committee on Food Hygiene

CCFICS Codex Committee on Food Import and Export Inspection and

Certification Systems

CCFL Codex Committee on Food Labeling
CCGP Codex Committee on General Principles

xii



িবুলটিridge University Press বুলটিদ্ৰ তিন্তু প্ৰতিষ্টি^{প্ৰা}শ্বিধাৰণ নিৰ্বাচন বিষয়ে বিষয় বিষ

More Information

List of Abbreviations and Acronyms

CCMAS Codex Committee on Methods of Analysis and Sampling

CCNASWP Codex Committee for North America and the South West Pacific

CCPR Codex Committee on Pesticide Residues

CCRVDF Codex Committee on Residues of Veterinary Drugs in Foods

CCSCH Codex Committee on Spices and Culinary Herbs

CEN European Committee for Standardization

CENELEC European Committee for Electrotechnical Standardization

CIMAC International Council on Combustion Engines

CISDA Confederation of International Soft Drinks Associations

CMISO Comité Mexicano para la atención de la ISO COPANT Pan American Commission of Technical Standards

COPOLCO Committee on Consumer Policy
CRD Conference Room Document
CTF1 Codex Trust Fund

CTF2 Codex Trust Fund 2
DDP Dry and Dried Produce

DEVCO Developing Countries Committee
DGN Dirección General de Normas
DIN Deutsches Institut für Normung
DSB Dispute Settlement Body

DSU Dispute Settlement Understanding

EC European Communities

ECMA European Computer Manufacturers Association

ECOSOC Economic and Social Council ETP Eastern Tropical Pacific

EU European Union

FAD Fish Aggregating Devices

FAO Food and Agriculture Organization
FFV Fresh Fruits and Vegetables
FSC Forest Stewardship Council
FSFE Free Software Foundation Europe

GAL Global Administrative Law

GATT General Agreement on Tariffs and Trade

GISEM Groupement International et Union Européenne des Sources

d'Eaux Minérales Naturelles

IAEA International Atomic Energy Agency
IATA International Air Transport Association
IATTC Inter-American Tropical Tuna Commission
IBWA International Bottled Water Association
ICAO International Civil Aviation Organization
ICC International Chamber of Commerce

ICJ International Court of Justice

ICT Information and Communication Technologies IDCP International Dolphin Conservation Program

IDF International Dairy Federation

© in this web service Cambridge University Press

xiii



Tradbridge University Press Cambridge University Press Optification and the Agreement on Technical Barriers to Frontmatter

More Information

xiv List of Abbreviations and Acronyms

IEC International Electrotechnical Commission

IGO Intergovernmental Organization
IIA International Institute of Agriculture
IIR International Institute of Refrigeration
ILO International Labour Organization
IMO International Maritime Organization
IN-LAW Informal International Law Making

IOC International Olive Council IPL International Public Law

IPPC International Plant Protection Convention

ISA International Federation of the National Standardizing

Associations

ISB International Standardizing Body

ISO International Organization for Standardization

IT Information Technologies

ITTF Information Technology Task Force ITU International Telecommunication Union

JECFA Joint FAO/WHO Expert Committee on Food Additives

JEMRA Joint FAO/WHO Expert Meeting on Microbiological Risk

Assessment

JISC Japanese Industrial Standards Committee
JMPR Joint FAO/WHO Meeting on Pesticide Residues

JTC1 Joint Technical Committee 1

KATS Korean Agency for Technology and Standards

LDC Least Developed Countries MFN Most Favored Nation

MoU Memorandum of Understanding
MPEG Moving Picture Expert Group
MRA Mutual Recognition Agreement
MRL Maximum Residues Limit
MSB Market Strategy Board

NAFTA North American Free Trade Agreement

NC National Committee

NGO Nongovernmental Organization NQI National Quality Infrastructure NSB National Standards Body

NTM Nontariff Measure

OASIS Organization for the Advancement of Structured Information

Standards

ODF Open Document Format

OECD Organization for Economic Co-operation and Development
OIE World Organization for Animal Health/International Office of

Epizootics

OIML International Organization of Legal Metrology
OIV International Organization of Vine and Wine



Cradbridge University Press Application of the Agreement on Technical Barriers to Frontmatter

More Information

List of Abbreviations and Acronyms

XV

OOXML Office Open XML

OPEC Organization of the Petroleum Exporting Countries

PAS Publicly Available Specification PASC Pacific Area Standards Congress

PEFC Programme for the Endorsement of Forest Certification

PPM Process and Production Method
R&D Research and Development
SABS South African Bureau of Standards
SAC Standardization Administration of China

SC Subcommittee

SIDA Swedish International Development Agency

SIS Swedish Standard Institute SIUG Swiss Internet User Group

SMB Standardization Management Board SME Small and Medium Enterprises SNV Schweizerische Normen-Vereinigung

SPS Sanitary and Phytosanitary
TBT Technical Barriers to Trade
TC Technical Committee

TMB Technical Management Board TPR Transnational Private Regulation

UN United Nations

UNCTAD United Nations Conference on Trade and Development UNECE United Nations Economic Commission for Europe

UNESCO United Nations Educational, Scientific and Cultural Organization

UNI Ente Italiano de Normazione

UNSCC United Nations Standards Coordinating Committee

UPU Universal Postal Union

VCLT Vienna Convention on the Law of the Treaties

WG Working Group

WHO World Health Organization

WMO World Meteorological Organization

WP Working Party

WPO World Packaging Organization
WSC World Standards Council
WTO World Trade Organization

