Public play upon private standards

How European and international economic law enter into voluntary regimes for sustainability

Partiti, E.D.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
Bibliography

Books


365
Stigler, G.J. (1968) The organisation of industry. Homewood, IL: Richard D. Irwin Inc

Academic articles


Blomme, E. (2007) State action as defence against 81 and 82 EC. *World Competition* 30(2)


Davies, A. (2014) Technical regulations and standards under the WTO Agreement on Technical Barriers to Trade. *Legal Issues of Economic Integration* 41(1)


Delimatsis, P. (2011) The fragmentation of international trade law. *Journal of World Trade* 45(1)
Emslie, J.J. (2005) Labelling programs as a reasonably available least restrictive trade measure under Article XX’s nexus requirement. *Brooklyn Journal of International Law* 30(2)


Fontanelli, F. (2011) ISO and CODEX standards and international trade law: What gets said is not what’s heard. *International and Comparative Law Quarterly* 60(4)


Green, A. (2005) Climate change, regulatory policy and the WTO. *Journal of International Economic Law* 8(1)


Iacovides, M.C. (2014) Marginal consumers, marginalised economics: Whose tastes and habits should the WTO Panels and Appellate Body consider when assessing ‘likeness’? *Journal of World Trade* 48(2)


Kuijper, P.J. (1995) The law of the GATT as a specialised field of international law. Ignorance, further refinement or self-contained system of international law? Netherlands Yearbook of International Law XXV
Lee, J. (2015) State responsibility and government-affiliated entities in international economic law. The danger of blurring the Chinese wall between ‘state organ’ and ‘non-state organ’ as designed in the ILC Draft Articles. Journal of World Trade 49(1)


Lovdahl Gormsen, L. (2007) The conflict between economic freedom and consume welfare in the modernisation of Article 82 EC. *European Competition Journal* 3(2)


Lydgate, E.B. (2013) The EU, the WTO and indirect land-use change. *Journal of World Trade* 47(1)

Mann, F.A. (1964) The doctrine of jurisdiction in international law. *Recueil de Cours 111*
Mavroidis, P.C. (2013) Driftin' too far from shore - Why the test for compliance with the TBT Agreement developed by the WTO Appellate Body is wrong, and what should the AB have done instead. *World Trade Review* 12(1)


Norpoth, J. (2013) Mysteries of the TBT Agreement resolved? Lessons to learn for climate policies and Developing Countries exporters from recent TBT disputes. *Journal of World Trade* 47(3)


Parret, L. (2010) Shouldn’t we know what we are protecting? Yes we should! A plea for a solid and comprehensive debate about the objectives of EU competition law and policy. *European Competition Journal* 6(2)
Peel, J. (2007) A GMO by any other name… might be an SPS risk!: Implications of expanding the scope of the WTO Sanitary and Phytosanitary Measures Agreement. *European Journal of International Law* 17(5)


Villalpando, S.M. (2002) Attribution of conduct to the State. How the rules on state responsibility may be applied within the WTO dispute settlement system. *Journal of International Economic Law* 5(2)
Wlostowski, T. (2010) Selected observation on regulation of private standards by the WTO. *Polish Yearbook of International Law* 30

**Chapters in edited books**


382


European Union case law

Cases of the Court of Justice of the European Union

Case C-1/12 Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência [2013] ECR I-000
Case C-100/13 Commission v Germany (Ü Mark) [2014] ECR I-0000
Case C-110/05 Commission v Italy (Trailers) [2009] ECR I-519
Case C-112/00 Schmidberger Internationale Transporte v Austria [2003] ECR I-5659
Case C-120/95 Decker v Caisse de Maladie del Employés Privés [1998] ECR I-1831
Case C-13/78 Eggers v Die Frie Hansestadt Bremen [1978] ECR I-1936
Case C-136/12 Consiglio Nazionale dei Geologi v Autorità Garante della Concorrenza e del Mercato [2013] ECR I-0000
Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos [2009] ECR I-04273
Case C-15/83 Denkavit Nederland [1984] ECR I-2171
Case C-171/05P Laurent Piau v Commission [2006] ECR I-003
Case C-171/11 Fra.bo v DVGW [2012], ECR I-0000
Case C-176/12 Association de Médiation Sociale v Union locale des syndicats CGT [2014],
Case C-178/84 Commission v Germany (Beer purity requirement) [1987] ECR I-0037
Case C-185/91 Bundesanstalt für den Güterfernverkehr v Reiff [1993] ECR I-580
Case C-190/98 Volker Graf v Filzmoser Maschinenbau GmbH [2000] ECR I-513
Case C-209/07 Competition Authority v Beef Industry Development [2008] ECR I-8637
Case C-22/76 United Brands Company and United Brands Continental BV v Commission [1977], ECR I-207
Case C-222/82 Apple and Pear Development Council v K.J. Lewis LTD and Other [1983] ECR I-4083
Case C-227/06 Commission v Belgium [2008] ECR I-46
Case C-240/83 ABDHU [1985] ECR I-531
Case C-240/97 Spain v Commission [1999] ECR I-6571
Case C-244/06 Dynamic Medien Vertriebs GmbH v Avides Media AG [2008] ECR I-505
Case C-249/81 Commission v Ireland (Buy Irish) [1982] ECR I-4005
Case C-250/97 Monsees v Unabhängiger Verwaltungssenat fur Karnten [1999] ECR I-2921
Case C-251/83 Haug-Adrion v Frankfurter Versicherungs AG [1984] ECR I-4278
Case 26-75 General Motors Continental NV v Commission [1975] ECR I-1367
Case C-26/76 Metro SB-Großmärkte GmbH & Co. KG v Commission [1977] ECR 1875
Case C-265/95 Commission v France (Spanish Strawberries) [1997] ECR I-6959
Case C-266/87 The Queen v Royal Pharmaceutical Society of Great Britain [1989] ECR I-1321
Case C-267/86 Van Eycke v ASPA [1988] ECR 4769
Case C-281/11 Sky Österreich GmbH v Österreichischer Rundfunk [2013] ECR I-0000
Case C-296/00 Prefetto Provincia di Cuneo v Silvano Carbone [2002] ECR I-4670
Case C-302/88 Hennen Olie [1990] ECR I-4625
Case C-309/99 Wouters and Others v Algemene Raad van de Nederlandse Orde van Advocaten [2002] ECR I-1653
Case C-311/85 Vereniging van Vlaamse Reisbureaus v VZW Sociale Dienst [1987] ECR I-3821
Case C-32/11 Allianz Hungária Biztosító and Others [2013] ECR I-0000
Case C-325/00 Commission v Germany (Labels of Origin and Quality) [2002] ECR I-9977
Case C-33/97 Colim nv v Bigg’s Continent Noord NV [1999] ECR I-3175
Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggetan and Svenska Elektrikerförbundet (Laval) [2007] ECR I-11767
Case C-35/96 Commission v Italy [1998] ECR I-3851
Case C-35/98 Staatssecretaris van Financiën v B.G.M. Verkooijen [2000] ECR I-4113
Case C-35/99 Criminal proceedings against Michele Arduino  [2002] ECR I-1529
Case C-350/07 Kattner Stahlbau GmbH v Maschinenbau- und Metall-Berufsgenossenschaft [2009] ECR I-1513
Case C-36/02 Omega Spielhallen-und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn [2004] ECR I-9609
Case C-36/74 Walrave and Koch v Association Union Cycliste Internationale [1974] ECR I-1406
Case C-360/10 Commission v Netherlands [2012] ECR I-0000
Case C-364/92 SAT Fluggesellschaft v Eurocontrol [1993] ECR I-43
Case C-367/12 Sokoll-Seebacher [2014] ECR I-0000
Case C-379/89 Preussen Elektra AG v Shleswag [2001] ECR I-2099
Case C-379/92 Criminal proceedings against Matteo Peralta [1994] ECR I-3453
Case C-382/12P MasterCard v. Commission [2014] ECR I-2201
Case C-384/93 Alpine Investment BV v Minister van Financiën [1995] ECR I-1141
Case C-411/98 Ferlini v Centre Hospitalier de Luxembourg [2000] ECR I-8126
Case C-415/93 Union Royale Belge des Sociétés de Football Association v Bosman [1995] ECR I-4921
Case C-426/11 Alemo-Herron & others v Parkwood Leisure LTD [2013] ECR I-0000
Case C-438/05 International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line ABP (Viking Line) [2007] ECR I-10806
Case C-456/10 Asociacion Nacional de Expendedores de Tabaco y Timbre (ANETT) v Administracion del Estado [2012] ECR I-000
Case C-49/07 MOTOE v Elliniko Dimosio [2008] ECR I-4863
Case C-5/94 The Queen v Minister of Agriculture, Fisheries and Food ex parte Hedley Lomas [1996] ECR I-2553
Case C-51/75 EMI Records Limited v Cbs United Kingdom Limited [1976] ECR I-811
Case C-513/99 Concordia Bus Finland Oy Ab Helsingin kaupunki, HKL-Bussiliikenne [1999] ECR I-7213
Case C-6/81 BV Industrie Diensten Groep v J.A. Beele Handelmaatschappij BV [1982] ECR I-707
Case C-617/10 Åklagaren v Hans Åkerberg Fransson [2013] ECR I-0000
Case C-67/97 Criminal proceedings against Ditlev Bluhme [1998] ECR I-08033
Case C-67/13P Groupement des cartes bancaires (CB) v European Commission [2014] ECR I-000
Case C-69/88 H. Krantz GmbH & Co. v Ontvanger der Directe Belastingen and Netherlands State [1990] ECR I-583
Case C-7/97 Oscar Bronner GmbH & Co. v Mediaprint [1998] ECR I-7791
Case C-70/10 Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL [2011] ECR I-11959
Case C-71/02 Herbert Kamer [2004] ECR I-3025
Case C-76/90 Sager v Dennemeyer & Co LTD. [1991] ECR I-4221
Case C-8/08 T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit [2009] ECR I-4529
Case C-8/74 Procureur du Roi v Benoît and Gustave Dassonville [1974] ECR I-837
Case C-9/56 Meroni v High Authority [1958] ECR I-0135
Case C-94-04 Federico Cipolla v Rosaria Fazari [2006] ECR I-11455
Case C-94/07 Andrea Raccanelli v Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV. [2008] ECR I-05939
Case C-12/11 McDonagh v Ryanair [2013] ECR I-0000.
Case C-269/90 Technische Universität München v Hauptzollamt München [1991]
ECR I-5469
Joined Cases 41/70 to 44/70 International Fruit Company and Others v Commission [1971] ECR I-411
Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85, C-
126/85, C-127/85, C-128/85 and C-129/85. Ahlström v Commission (Wood Pulp)
[1988] ECR I-5233
Joined cases 96-102, 104, 105, 108 and 110/82 NV IAZ International Belgium and
Joined Cases C-115/97, C-116/97, C-117/97 Brentjens’ Handelsonderneming v.
Stichting Bedrijfspensioefonds voor de Handel in Beouwmaterialen [1999] ECR I-
6025
Joined Cases C-154/04, 155/04 Alliance for Natural Health [2005] ECR I-6451
Joined Cases C-177/82 and 178/82 Criminal Proceeding against Jan van de Haar
and Kaveka de Meern BV [1984] ECR I-1798
Pensioefonds Medische Specialisten [2000] ECR I-6451
Joined Cases C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13 API -
Anonima Petroli Italiana SpA v Ministero delle Infrastrutture e dei Trasporti and
Ministero dello Sviluppo economico [2014] ECR I-0000
Joined Cases C-267/91 and 268/91 Keck and Mithouard [1993] ECR I-6126
Joined Cases C-359/95P and 379/95P, Commission and France v Ladbroke Racing
[1997] ECR I-6265
Joined Cases C-46 and 48/93 Brasserie du Pêcheur SA v Germany and the Queen v
Secretary for State and Transport ex parte: Factortame Ltd and Others [1996] ECR I-
1131
Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P
Joined Cases C-51/96, C-191/97 Deliège v Ligue francophone de judo et
disciplines associées ASBL and Others [2000] ECR I-2549
Joined Cases C-544/03 and C-545/03 Mobistar SA v Commune de Fléron, and
Joined Cases C-570/07 and C-571/07 José Manuel Blanco Pérez and María del
Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios and Principado de
Asturias [2010] ECR I-4629
Joined Cases C-90/90 and 91/90 Jean Neu and Others v Secrétaire d’Etat à
l’Agriculture et à la Viticulture [1991] ECR I-3633
1207
Joined Cases T-374/94; T-375/94; T-384/94; T-388/94 European Night Services v
Commission [1998] ECR II-3141

390
Joined cases T-74/00, T-76/00, T-83/00, T-84/00, T-85/00, T-132/00, T-137/00 and T-141/00 Artegodan and Others v Commission [2002] ECR II-4945

Cases of the General Court

Case T-419/03 Alstoff Recycling Austria v Commission [2011] ECR II-0000
Case T-427/08 Confédération européenne des associations d’horlogers-réparateurs (CEAHKR) v Commission [2010] ECR II-5865
Case T-90/11 Ordre national des pharmaciens (ONP) and Others v European Commission [2014] ECR II-0000

Opinions of Advocate Generals

Opinion of Advocate General Bot in Case C-110/05 Commission v Italy (Trailers) [2009] ECR I-519
Opinion of Advocate General Jacobs in Case C-7/97 Oscar Bronner GmbH & Co. v Mediaprint delivered on 28 May 1998, ECR I-7794
Opinion of Advocate General Jacobs in Case C-325/00 Commission v Germany (Labels of Origin and Quality) [2002] ECR I-9977
Opinion of Advocate General Kokott in Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos [2006] ECR-I782
Opinion of Advocate General Kokott in Case C-360/10 Commission v Netherlands [2012] ECR I-0000

391
Opinion of Advocate General Poiares Maduro in Case C-438/05 International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line ABP (Viking Line) [2007] ECR I-10806

Opinion of Advocate General Poiares Maduro in Case C-438/05 International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line ABP (Viking Line) [2007] ECR I-10806


Opinion of Advocate General Trstenjak in Case C-209/07 Competition Authority v Beef Industry Development [2008] ECR I-08637

Opinion of Advocate General Trstenjak in Case C-265/06 Commission v Portugal (tinted glass car windows) [2008] ECR I-2245


Opinion of Advocate General Trstenjak in Case C-282/10 Dominguez v Centre Informatique du Centre Ouest Atlantique [2012] ECR I-0000


Commission Decisions

Commission Commitment Decision COMP/C-3/38.636 Rambus [2009]
Acts of European institutions and European legislation

Commission Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements [2001] C 3/02
Commission Guidelines on the application of Art. 81(3) or the Treaty [2004] C 101/08
Commission Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings [2009] C 45/02


Commission implementing regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market. L 177/16

Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) [2001] C 368/07

Commission Notice on the definition of relevant market for the purpose of Community competition law [1997] C 372/5

Commission Regulation 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2010] L 102/1

Commission Report COM(2016)263 final on options for an EU eco-label scheme for fishery and aquaculture products. NR

Commission Notice on voluntary schemes and default values in the EU biofuels and bioliquids sustainability schemes [2010] C 160/01


Council Regulation 2913/92 of 12 October 1992 establishing the Community Customs Code L 302/1


European Parliament/Council/Commission, Inter-institutional agreement on better law-making [2003] C 321/1


Regulation (EU) 995/2010 of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. L 296/23

**Decisions of National Competition Authorities**


**Case law of the World Trade Organisation**

**Appellate Body Reports**


Appellate Body Report, European Communities - Measures Affecting Trade in Large Civil Aircraft, WT/DS316/AB/R, adopted 18 May 2011
Appellate Body Report, European Communities - Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS401/AB/R, adopted 22 May 2014
Appellate Body Report, European Communities - Trade Description of Sardines, WT/DS231/AB/R, adopted 26 September 2002
Appellate Body Report, Japan - Taxes on Alcoholic Beverages, WT/DS08/AB/R, 4 October 1996
Appellate Body Report, United States - Measures Concerning the Importation, Marketing and Sale of Tuna Products, WT/DS381/AB/R, adopted 16 May 2012
Appellate Body Report, United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, adopted 15 December 2003
Appellate Body Report, United States - Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, WT/DS192/AB/R, adopted 8 October 2001,

Panel Reports


397
Panel Report, Australia - Measures Affecting Importation of Salmon. Recourse to Art. 21.5 of the DSU by Canada, WT/DS18/RW, adopted 18 February 2000
Panel Report, Brazil – Measures Affecting Imports of Retreaded Tyres, WT/DS332/R, adopted 12 June 2007,
Panel Report, Canada - Administration of the Foreign Investment Act, L/5504 - 30S/140, adopted 7 February 1984
Panel Report, European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/R, adopted 1 December 2003
Panel Report, European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. Recourse from the United States, WT/DS290/R, adopted 15 March 2005
Panel Report, European Communities - Regulation on Imports of Parts and Components, L/6657 - 37S/132, 16 May 1990
Panel Report, European Communities - Trade Description of Sardines, WT/DS231/R, adopted 29 May 2002
Panel Report, European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, adopted 12 March 2001
Panel Report, European Economic Communities - Restrictions on Import of Dessert Apples, L/6491, GATT B.I.S.D. (36th Sup) at 93, adopted 22 June1989
Panel Report, Mexico – Tax Measures on Soft Drinks and Other Beverages, WT/DS308/R, adopted 7 October 2005
Panel Report, Subsidies and State Trading, L/1160, adopted 23 March 1960
Panel Report, Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines; WT/DS371/R, adopted 15 November 2010
Panel Report, United States - Certain Measures Affecting Imports of Poultry from China, WT/DS392/R, adopted 29 September 2010
Panel Report, United States - Measures Affecting the Production and Sale of Clove Cigarettes WT/DS406/R, adopted 2 September 2011
Panel Report, United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/R, adopted 15 September 2011
Panel Report, United States Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/R, adopted 10 November 2004

399
Documents and Decisions of World Trade Organisation Committees and Ministerials

Committee on Technical Barriers to Trade. Decisions and Recommendations Adopted by the Committee since Jan. 1, 1995 – Note by the Secretariat. 28 November 200 G/TBT/1/Rev.7


Committee on Technical Barriers to Trade. Fifth triennial review on the implementation and operation of the TBT Agreement. 13 November 2013. G/TBT/26

Committee on Technical Barriers to Trade. Seventh Triennial Review of the Operation and Implementation of the TBT Agreement. 3 December 2015 G/TBT/37

Committee on Technical Barriers to Trade. Third triennial review on the implementation and operation of the TBT Agreement. 11 November 2003. G/TBT/13

Committee on Sanitary and Phytosanitary Measures. Actions regarding SPS-related private standards 6 April 2011. G/SPS/55


Committee on Sanitary and Phytosanitary Measures. Report of the co-stewards of the private standards e-working group to the March 2015 meeting of the SPS Committee on Action 1. 17 March 2015. G/SPS/W/283

Committee on Sanitary and Phytosanitary Measures. Second report of the co-stewards of the private standards e-working group on Action 1. 30 September 2014. G/SPS/W/281

Submission by the United Kingdom to the Committee on Sanitary and Phytosanitary Measures. 9 October 2007, G/SPS/GEN/802

Negotiating history on the coverage of the Agreement on Technical Barriers to Trade with regard to labelling requirements, voluntary standards, and processes and production methods unrelated to product characteristics. Note by the Secretariat. 29 August 1995. WT/CTE/W/10 - G/TBT/W/11

Note by the Secretariat. Standardising bodies that have accepted the code of good practice for the preparation, adoption and application of standards. 23 February 2015. G/TBT/CS/2/Rev.21


Decisions of international tribunals and international law sources

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), Merits, I.C.J. Reports 2007, 4
Case Concerning United States Diplomats and Consular Staff in Teheran, Merits, Judgement, I.C.J. Reports 1980, 3
Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Merits, Judgement, I.C.J. Reports 1986
PCIJ, SS Lotus, Permanent Court of International Justice Reports, Series A, No. 10, 18-19 (1927)
International Court of Justice, Nottebohm (Liechtenstein v Guatemala), ICJ Rep 4 (1955)
United Nations General Assembly Resolution 56/83 (Dec. 12, 2001)

Working papers and reports

Autoriteit Consument & Markt (2015) ACM’s analysis of the sustainability arrangements concerning the ‘Chicken of Tomorrow’
ISEAL Alliance (2011) Scaling up strategy. A strategy for scaling up the impact of voluntary standards
ISEAL Alliance (2014) Setting social and environmental standards. ISEAL Code of Good Practice v. 6.0
OECD (2013) The role and measurement of quality in competition analysis. OECD Competition Committee
Potts, J. (2008) The legality of PPMs under the GATT. Challenges and opportunities for sustainable trade policy. International Institute for Sustainable Development