

From: Lawrence Herman

To: Canadians Concerned About Trade

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Re: PRIVATE-SECTOR GLOBAL STANDARDS STILL NEED SOME GOVERNMENT HELP

Non-state actors are increasingly engaged in authoritative decision-making over standards. As a result, frameworks for governing international economic transactions are increasingly being maintained by the private sector, both with and without government cooperation.

That rings as true today as when I [wrote](#) those words 10 years ago in a C.D. Howe Institute Commentary.

The rise of “private global governance,” voluntary standards adopted by business in the absence of laws enacted by governments or rules formulated by intergovernmental organizations has only proliferated in the last decade, exacerbated by the US evisceration of the World Trade Organization (WTO) appeal process and China’s disregard for its WTO trade obligations. Non-binding private global regulation has increasingly moved into the vacuum.

Voluntary standards of conduct in the international business arena was not entirely new. As far back as 1976, the Organization for Economic Co-operation and Development (OECD) [set out](#) its ground-breaking guidelines for multinational enterprises (MNEs), a set of voluntary standards for responsible international business conduct in foreign markets. The Guidelines came about, in large part, because of developing country pressure and voicing increasingly loud complaints about the conduct of MNEs in their markets. The OECD Guidelines have been part of the international governance orbit since then and are updated continually.

Inspired in part by these OECD efforts, private sector developments starting about 20 years ago eventually led to the emergence of standards and practices of corporate social responsibility (CSR), since morphed and expanded into a mix of norms under what is broadly termed environmental, social and governance (ESG) standards today. ESG is a hot topic, top of the agenda as compliance has become critical for public companies and private capital even where there is no legislative necessity to act.

Whatever the motivation – investor pressure or public opprobrium about doing business with autocratic regimes – the fact is that private sector rules, practices and standards are now an indelible feature of international corporate governance.

But confusion and duplication abound in the proliferation of standard-setting bodies, bedeviling corporations and investors alike. In climate change alone, we [find](#): The Sustainability Accounting Standards Board (SASB); the Task Force on Climate Related Financial Disclosure (TCFD); the International Integrated Reporting Council (IIRC); the Climate Disclosure Standards Board; and the Workforce Disclosure Initiative (WDI).

As these corporate initiatives have expanded, it’s caused governments to move into the ESG realm, notably in articulating standards for corporate disclosure and reporting. In Canada’s case, the 2022 federal budget announced that the Office of the Superintendent of Financial Institutions would require all federally regulated financial institutions (banks and insurers) to begin reporting under TCFD standards. In the non-federally regulated financial sector, the Canadian Securities Administrators are formulating mandatory reporting requirements for publicly traded companies based on the TCFD framework. This follows what the Securities and Exchange Commission is doing south of the border.

The problem is that other jurisdictions are pursuing different paths, complicating any agreed multilateral approach to uniform standards. In the EU, the new Corporate Sustainability Reporting Directive (CSRD) extends beyond standards under the TCFD framework or the 77 industry-specific standards of the Sustainability Accounting Standards Board.

Even if the private sector has done a good, but unorganized job in filling a vacuum that governments and international organizations have left open, there is need for some convergence and a degree of uniformity here for the sake consistency global trade and financial order.

These points about state involvement seem relevant even after 10 years:

- promote greater harmony and convergence in private regulations through possible mutual recognition arrangements and protocols at the international level and through other informal efforts at international cooperation;
- promote and encourage openness and transparency in standard-setting activities to aid in their broader legitimacy;
- discourage anti-competitive standards that permit less than full and open market forces to operate, and, where a concern is identified, consulting with standard-setting bodies and in concert with likeminded governments to correct potential anticompetitive standard-setting; and
- encourage the development of private standards that heed the special needs of developing countries and emerging economies, rather than those that respond only to corporate interests in western industrialized countries.

The task for governments is not to pre-empt the actions of legitimate private sector rulemaking bodies, but to bring some degree of conformity to the global scene, to coalesce around a set of broadly agreed standards for corporate reporting, governance and social behaviour. This would apply whether in human rights, labour conditions, climate change or other sectors.

International business would be the beneficiary.

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