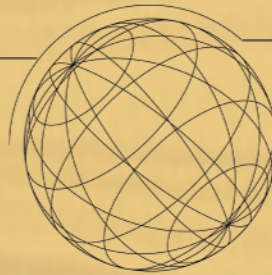


Trade and Environment at the WTO



WORLD TRADE
ORGANIZATION

Market Access and Environmental Requirements

THE EFFECT OF ENVIRONMENTAL MEASURES ON MARKET ACCESS

Marrakesh Declaration - Item 6 - (First Part)⁹

The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them.

Doha Declaration - Paragraph 32(i) (First Part)

The effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them.

This item is particularly important to the work of the CTE in that it holds the key to the complementarities that exist between sound trade and environmental policy-making. Improved market access for developing countries' products is key to the goal of achieving sustainable development. According to Principle 11 of the 1992 Rio Declaration on Environment and Development, environmental standards, objectives and priorities need to reflect the particular environmental and developmental context to which they apply. This means that environmental standards applied by some countries could be inappropriate and of unwarranted economic and social cost to others, particularly developing countries. Small and medium sized enterprises (SMEs) are especially vulnerable in this regard.

Members generally consider that the protection of the environment and health are legitimate policy objectives. However, it is also acknowledged that environmental requirements set to address such objectives could affect exports adversely. The answer to concerns about reduced market access is not to weaken environmental standards, but rather to enable exporters to meet them. In this context, it is

⁹ For the second part of item 6 and paragraph 32(i) see page 22.

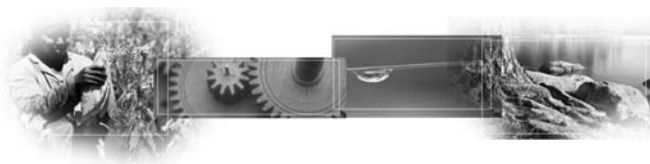


argued that there is sufficient scope in existing WTO Agreements to ensure that environmental measures do not unduly restrict exports (e.g. the rules of the SPS and the TBT Agreements).

In striking the appropriate balance between safeguarding market access and protecting the environment, Members consider that there is a need to examine how environmental measures could be designed in a manner that (i) is consistent with WTO rules; (ii) inclusive; (iii) takes into account capabilities of developing countries; and, (iv) meets the legitimate objectives of the importing country. It is recognized that it is essential to involve developing countries in the design and development of environmental measures as a way of mitigating negative trade effects. Similarly, the facilitation of effective participation of developing countries in the early stages of the international standard-setting process is important. Once developed, flexibility in the application of environmental measures is seen as key.

In discussing ways forward on market access issues, several Members have felt that more weight has to be given to the identification of trade opportunities for sustainable growth. The CTE could look at incentives and means to assist developing countries to identify products, and develop export markets for environmentally friendly products in areas where these countries enjoy a comparative advantage. This would reinforce the message contained in the CTE's 1996 Singapore Report that trade liberalization has the potential to generate resources that could be applied to implement sound environmental policies. Moreover, the Plan of Implementation adopted at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2001 has reiterated the need to support voluntary, WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for goods which are environmentally friendly.¹⁰

¹⁰ WT/CTE/W/220/Rev.1, "Report of the World Summit on Sustainable Development", Note by the Secretariat.



LABELLING REQUIREMENTS FOR ENVIRONMENTAL PURPOSES

Marrakesh Declaration - Item 3(b)

The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, such as standards and technical regulations, and packaging, labelling and recycling requirements

Doha Declaration - Paragraph 32(iii)

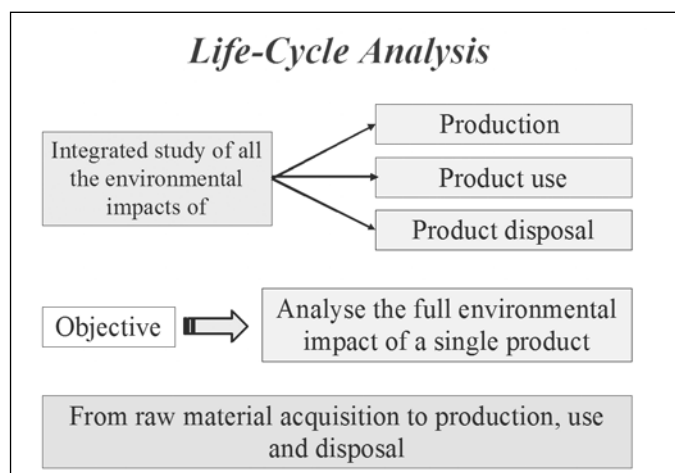
Labelling requirements for environmental purposes

Discussion of item 3(b) of the Marrakesh Work Programme has focused primarily on the issues of eco-labelling¹¹ and handling requirements¹² (such as requirements for packaging, recycling, re-use, recovery, and disposal). The issue of labelling requirements for environmental purposes has become, since the Doha Ministerial Conference, an issue of special focus in the work of the CTE Regular.

The Increasing Complexity of Eco-Labels

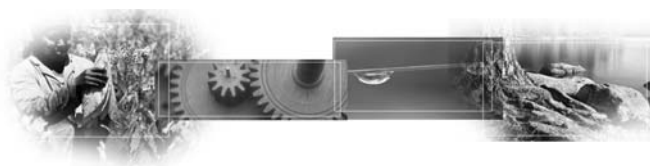
The use of eco-labels by governments, industry and non-governmental organizations is increasing. Moreover, the growing complexity and diversity of environmental labelling schemes raise difficulties for developing countries, and particularly SMEs in export markets. While international standards for labelling have a significant potential to facilitate trade by promoting the convergence of labelling requirements, developing countries can be at a disadvantage due to limited or ineffective participation in these processes. There is a need to better involve developing countries in the setting of environmental standards and regulations, whether at national or international level.

Moreover, eco-labelling schemes tend to be based on life-cycle analysis, i.e. the consideration of the environmental effects of a product from its production to its final disposal. In practice, life-cycle analysis is not easy to conduct, and eco-labels are frequently based on criteria that



¹¹ See document WT/CTE/W/150, 29 June 2000, "Information Relevant to the Consideration of the Market Access Effects of Eco-Labelling Schemes", Note by the Secretariat.

¹² See below page 20.



relate to only a few aspects of the process of production or of the product itself. The proliferation of eco-labelling schemes could confuse consumers (i.e. prevent them from being able to recognize or trust any particular label), and could make it difficult for exporters to meet the many different criteria on which they are based (particularly when they target the same products).

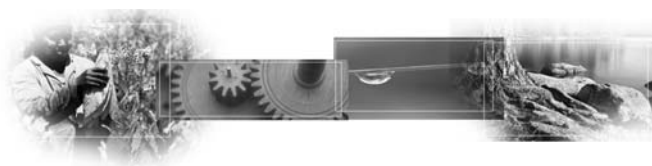
Are Eco-Labels Effective Trade Instruments?

Members generally agree that voluntary, participatory, market-based and transparent environmental labelling schemes are potentially efficient economic instruments to inform consumers about environmentally friendly products. Moreover, they tend to be less trade restrictive than other instruments. However, environmental labelling schemes could be misused for the protection of domestic markets. Hence, these schemes need to be non-discriminatory and not result in unnecessary barriers or disguised restrictions on international trade.

The assumption that labelling schemes have a positive effect on protecting the environment has been questioned by some. The criteria on which eco-labels are based are frequently determined through consultation with interested parties at the national level. A common complaint by the users of eco-labels has been that eco-labelling criteria tend to focus on local concerns and do not address the views of foreign suppliers, nor the specific environmental situation in the countries of these suppliers. For instance, an eco-label developed in a country with a serious air pollution problem may put the emphasis on air pollution control measures, whereas the main environmental problem in the foreign country could have to do with water and not air.

The PPMs Issue

A particularly thorny issue in the eco-labelling debate has been the use of criteria linked to the Processes and Production Methods (PPMs). WTO Members agree that countries are within their rights under WTO rules to set criteria for the way products are produced, if their production method leaves a trace in the final product (e.g. cotton grown using pesticides, with there being pesticide residue in the cotton itself). However, they disagree over the WTO consistency of measures based on what are known as "unincorporated PPMs" (or "non-product related PPMs") - i.e. PPMs which leave no trace in the final product (e.g. cotton grown using pesticides, with there being no trace of the pesticides in the cotton). Many developing countries argue that measures which discriminate between products based on unincorporated PPMs, such as some eco-labels, should be considered WTO inconsistent.



The issue of unincorporated PPMs has triggered a legal discussion in the WTO on the extent to which the TBT Agreement covers and allows unincorporated PPM-based measures. Currently, a major challenge to the effectiveness of the TBT Agreement is the increasing use (not only in the area of the environment) of process-based, as opposed to product-based, regulations and standards. This may require added reflection on the rules of the TBT Agreement relating to equivalence and mutual recognition, as a means of addressing the problems posed by differing environmental standards across countries. On equivalence, the TBT Agreement urges countries to recognize the equivalence of the norms set by their trading partners, even when they differ from their own, provided they achieve the same final objective. For developing countries, the recognition of the equivalency of their own certification systems is an area of particular concern. On mutual recognition, the TBT Agreement urges countries to recognize the procedures their trading partners use to assess compliance with norms, if they are convinced of the reliability and competence of their conformity assessment institutions. It has been argued that the TBT principles of equivalence and mutual recognition could have useful applications in the labelling area, where Members could come to recognize the labelling schemes of their trading partners, even where they are based on criteria that differ from their own, provided they succeed in achieving the intended objective.

The TBT Agreement

Most Members are of the view that existing WTO disciplines are adequate to deal with the issue of environmental labelling, including specific trade concerns that could arise. The issue is one of satisfactory implementation of the SPS and TBT Agreements.¹³ In their view, no compelling argument has been made in favour of a common understanding or guidance to be negotiated in respect of labelling for environmental purposes. Nor is it clear that further work on this issue needs to include the clarification of existing rules. For these Members, the TBT and SPS Agreements have created the appropriate balance of rights and obligations for both mandatory and voluntary labelling programmes.

With respect to voluntary environmental labelling schemes, the TBT Agreement's Code of Good Practice for the Preparation, Adoption and Application of Standards is important, and acceptance of this Code by the bodies developing labelling requirements is encouraged. Moreover, in 2000, the TBT Committee agreed on a set of "Principles for the Development of International Standards", which provide useful guidance.¹⁴ This decision contains the principles for the development of standards,

¹³ For more detail on the TBT and SPS Agreements, see page 54.

¹⁴ Annex 4 of G/TBT/9, 13 November 2000, "Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade"



including environmental labelling standards. These are: transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and, wherever possible, responsiveness to the needs and interests of developing countries.

What is the Appropriate Forum to Discuss this Issue?

Views diverge on the appropriate forum to discuss the issue of environmental labelling. Some Members are of the view that, considering the mandate contained in paragraph 32(iii) of the Doha Ministerial Declaration, which instructs the CTE to give particular attention to labelling requirements for environmental purposes, the CTE needs to intensify its work on environmental labelling. The discussion in the CTE could then be used as an input to the debate in the TBT Committee.

Many other Members, however, hold a different view. They argue that the TBT Committee is better suited for the task of examining WTO rules vis-à-vis labelling since it is already discussing labelling in general, including environmental labelling. They maintain that it would be unwise for the CTE either to pre-empt or to duplicate such work and that it is preferable to consider the results of the work carried out in the TBT Committee before taking a decision on the course of action for the CTE.

Discussions on Labelling in the TBT Committee

During the Second Triennial Review of the TBT Agreement (November 2000), the TBT Committee "reiterated the importance of any such requirements labelling requirements being consistent with the disciplines of the Agreement, and in particular stressed that they should not become disguised restrictions on trade".¹⁵ In 2001, the TBT Committee agreed to start structured discussions on labelling. TBT discussions cover all sorts of labelling schemes that have proliferated in the market-place (some mandatory, some voluntary, and some based on unincorporated PPMs).

The Committee reverted to the issue of labelling during the Third Triennial Review. As reflected under "other elements" of the report of the Review, it was agreed to continue to consider labelling concerns in its discussions in the context of the implementation and operation of the TBT Agreement.¹⁶

¹⁵ G/TBT/9, 13 November 2000, "Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade".

¹⁶ G/TBT/13, 12 November 2003, "Third Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade".



A workshop on labelling took place in October 2003 under the auspices of the TBT Committee. The aim of this event was to provide Members with a better understanding of the preparation, adoption and application of labelling requirements in the context of the implementation of the TBT Agreement, as well as the impact of such requirements on market access. It also provided Members with an opportunity to draw information from a wide variety of perspectives and concrete experiences (including those of consumers, industries, importers, exporters and regulators). This event was based on actual case studies, with a particular focus on developing countries' concerns. It took into account a range of labelling schemes in different sectors and with varying objectives, which could be of interest to WTO Members.¹⁷

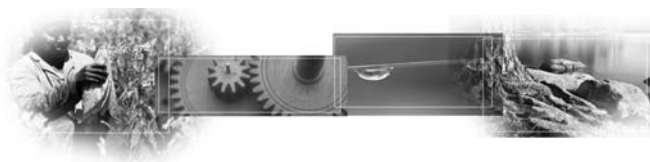
Handling Requirements

A number of countries have set up policies on the kind of packaging that can be used in their markets and on the recovery, re-use, recycling or disposal of packaging materials once they have served their purpose. These policies can increase costs for exporters, act as potential barriers to trade, and result in discriminatory treatment, even if the same requirements are imposed on both domestic products and imports. Wood, for example, is used for packaging in many Asian countries, but is not regarded as recyclable in Europe.

On the issue of the potential trade effects of waste handling requirements, concerns were expressed by Members regarding:

- the extent to which the selection criteria governing waste handling schemes are delegated to domestic industry groups and tailored to their preferences;
- the degree to which foreign suppliers are allowed to participate in the design and preparation of these schemes;
- the extent to which packaging favoured by overseas suppliers is accepted by the schemes;
- the cost of participation in the schemes; etc.

¹⁷ For a summary of the workshop on labelling see http://www.wto.org/english/tratop_e/tbt_e/event_oct03_e/labelling_oct03_summary_e.htm.



TAXES FOR ENVIRONMENTAL PURPOSES

Marrakesh Declaration - Item 3(a)

The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes.

Environmental charges and taxes are increasingly being used by WTO Member governments for the pursuit of national environmental policy objectives, with a view to "internalizing" domestic environmental costs. WTO rules discipline the way in which governments impose internal taxes and charges on traded goods, when imposed on imported products or rebated on exports. This is an issue of considerable interest and importance to trade and environment policy-makers in the context of proposals to increase taxes on environmentally sensitive inputs to production, such as energy (i.e. carbon taxes) and transportation.

Under existing GATT rules and jurisprudence, "product" taxes and charges can be adjusted at the border, but "process" taxes and charges by and large cannot. For example, a domestic tax on fuel can be applied perfectly legitimately to imported fuel, but a tax on the energy consumed in producing a ton of steel cannot be applied to imported steel. Since environmental taxes and charges are at least as much process-oriented as product-oriented, WTO rules have raised concern over the competitiveness implications of environmental process taxes and charges applied to domestic producers. The CTE has noted the importance of further work on the extent to which WTO rules need to be reviewed to accommodate environmental taxes and charges.

