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Lessons Learned on Trade and Sustainable Development

Distilling Six Years of Research from the Trade Knowledge Network



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Chapter Three

Trade-related environmental standards: make them better, meet them better, but don't bother complaining

Environmental standards set in developed countries are of keen interest to developing country policy-makers and exporters, being hard to know, hard to meet, sometimes unreasonable, but for the most part, imperative to export success. In effect, they are one more facet of the potential tension between environmental and development goals; if they are made and implemented without regard to their wider effects on exporters, and with a sole focus on their environmental objectives, they will often frustrate sustainable development in developing countries.

But rejecting them is not a solution, except for the limited number that can be contested under trade law. Instead, we need renewed efforts by exporter governments as well as standard-setters to help make trade-related environmental standards an opportunity for environmentally-friendly export success.

By delving into the specifics of these standards, and the difficulties encountered by developing country exporters in meeting them, the TKN research gives us at once some insight into their impacts in the South, and the beginnings of a roadmap to having them serve both their environmental objectives and the objective of sustainable development.

Kaushik (1999) argues that environmental standards are tougher on developing country exporters than on their competitors in developed countries, for a number of reasons:

> "Lack of infrastructural and monitoring facilities, limited technology choices, inadequate access to (and relatively more expensive) environmentally friendly raw materials and information are one set of reasons identified. Secondly, small and medium enterprises (SMEs) face more formidable compliance costs and there is an increasing emergence of environmental standards of export interest to them. Thirdly, developing country enterprises lack the skill and technology required for exploiting the positive trading opportunities generated by environmental measures. Fourthly, developing country exports are more vulnerable to market access barriers on account of their scale and sectoral composition. A connected problem is the diseconomies of scale on account of small domestic markets."

Many of these themes are explored in various sections of this book, and the TKN research cited in this chapter seems to confirm that developing countries

face pressing challenges in meeting (or in demonstrating compliance with) environmental requirements in their target markets. Some of those challenges are explored below. The most interesting question, to which we turn in greater detail in concluding this chapter, is what to do about it.

The sentiment that informed many early developing country government positions was two-fold: first, to urge recourse to the WTO rules to remedy the unfairness of many environmental standards, and second, to deny a relationship between trade and environment, so as to avoid discussions that might legitimize trade-related environmental requirements.

Najam (1999) forcefully argues the self-defeating nature of the defensive position that underlies this sort of denial. As noted in the previous chapter, he calls for a "proactive stand on the environment"—a strategic position that exploits the opportunities offered by the trade-environment linkage, and works to avoid the risks. Indeed, the modern developing country positions on trade and environment in the WTO arena are increasingly founded on such strategic positions.

One of the clear policy recommendations from the PRCEE (1999) research was as follows:

> "The direct impact of these environmental articles may be negative on the trade of developing countries. However, it is neither appropriate nor effective to try to reject them. The right approach should be to analyze them, adjust them, adapt to them and create conditions to meet their requirements."

In the Chinese case—which was in this respect typical of the TKN research—this statement in part reflects the fact that most of the important standards faced by exporters are laid down not by governments, whose mandatory requirements can be contested as breaching trade law obligations, but by private buyers, or non-governmental labelling organizations. In the case of private buyers, and to a large extent also in the case of non-governmental labellers, questioning the criteria offered up by the standard-setters would be fruitless.

In the same vein, TIPS (1999) counsels an approach that distinguishes those standards that are contestable from those that are not:

> "The studies … showed that trade and environment linkages do not only arise from, and hence can be addressed within, the formal world trading system and the WTO. Some of the issues presented, such as eco-labels, are industry-led initiatives and ostensibly voluntary. Others are based on real or perceived consumer demands or consumer risk aversions, such as the need for pesticide-free produce. Therefore a policy response cannot be limited only to a better presentation of South Africa's position in world trade fora. A more nuanced and broader approach is required to meet the challenges presented."

Where standards are contestable and unfair, they should be contested (though the system for doing so via trade law is hardly ideal, and the impacted firms may have suffered irreparable damage by the time there is any redress). In other cases, the energies of exporters and their governments should focus instead on strategically exploiting the opportunities they might offer. In this respect environmental standards should be seen as no different than other expressions of consumers' tastes; the challenge is to fulfil them innovatively, and to do so more cheaply and completely than the competition.

On types of standards, and on PPMs

The remainder of this chapter will consider the results of the TKN research to gain insight into how this might be done, looking at the roles that might be played by governments in exporting and importing countries. Before turning to that question, however, it will be useful to segregate the various types of standards, and to briefly touch on the differing policy implications each poses.

Table 1 shows the various types of measure we usually have in mind when we refer to environmental standards.[8] They can be imposed by governments, private buyers, or non-governmental labelling organizations, and any standards can be based on either the processes and production methods (PPMs) by which the products are made, or on the characteristics of the product itself.[9]

Table 1: A Taxonomy of Standards

	PPM-based	Product-based
Set by government	*Voluntary* (eco-labels): e.g., organic standards;	*Voluntary* (eco-labels): e.g., eco-friendly materials, energy efficiency standards;
	Mandatory (technical regulations): e.g., dolphin-safe shrimp harvesting methods, related labelling requirements	*Mandatory* (technical regulations): e.g., bans on CFC refrigerant, required automobile emission reduction systems, related labelling requirements

8 Remember (as per footnote 4) that in trade law parlance standards are voluntary requirements, whether imposed by governments or other bodies. Mandatory requirements laid down by governments are technical regulations. We use the term standards to refer to both.

9 Some *process* requirements are put in place because following them will have a desired effect on the end *product*. For example, requirements for sanitary handling and processing of food products are in place in order to prevent contamination of the final product. In the technical language of the debates, these sorts of standards are said to cover "product-related" PPMs, while those that are concerned entirely with process are said to cover "non-product-related" PPMs. In this text we will lump together product standards and product-related PPM standards. This gives us greater clarity, but loses nothing in terms of policy-relevant specificity.

	PPM-based	Product-based
Set by private buyers[10]	e.g., environmental management system requirements (ISO 14000); pollution or technology standards; codes for sustainably sourced materials	e.g., energy efficiency standards; product recyclability requirements
Set by private standards bodies	e.g., non-governmental standards for sustainable forestry, fisheries practices (FSC, MSC)	e.g., non-governmental standards for eco-friendly materials, energy efficiency standards

Several observations flow from this taxonomy. One is that only a small sub-set of standards can be addressed by seeking remedy in the WTO. Only government standards are covered by WTO rules—buyers' standards can be as unfair and inappropriate as the market will bear. Rotherham (2003b) notes that there is a long-standing and hardy debate over whether private labels are covered by WTO rules, but concludes that there will be no consensus on their inclusion in the near future. Of the universe of government standards, only mandatory standards (technical regulations) are effectively contestable; voluntary standards are covered by a legally weak code of good practice.[11] And finally, technical regulations covering environment-related PPMs are extremely rare. In the end, legally contestable standards represent a very small slice of the pie that is trade-related environmental standards.

There are, of course, a number of *human health*-related technical regulations, some of which the TKN research focused on as questionable, asking whether the benefits in the importing countries were out of proportion to the economic costs borne by exporters. Kaushik (1999) argues that the EU standards on aflatoxin levels in peanuts—which exceed the norms set by the Codex Alimentarius, the international standard-setting body for food-related standards—engender disproportionate costs, and may be designed to serve protectionist ends. And there have been similar charges—though none were raised

10 In many cases the private buyers are not technically setting the standard. The ISO 14000 standards demanded by many private buyers are in fact set by the ISO, an international standards body.

11 Code of Good Practice for the Preparation, Adoption and Application of Standards, Annex 3, TBT Agreement.

by the TKN researchers—about the legitimacy of the broad body of import restrictions on genetically modified organisms.[12] These concerns might well be pursued within the context of WTO law. But, again: such standards are in the distinct minority of standards faced by developing country exporters.

This is not to suggest that there are no protectionist environmental standards, or that those that exist are insignificant. Kaushik (1999) alleges, for example, that some developed country standards on formaldehyde, glyoxal and PCP residues in textiles were driven at least in part by the fact that they would benefit western holders of patents on the only known substitutes. And PRCEE (1999) notes (though it does not allege protectionist intent) that the bans in many countries on the use of penlachlorophenol—a fungicide used in leather tanning—has greatly benefited the U.S. company that manufactures the only viable alternatives. Such standards may have significant impacts, and may have protectionist genesis. But the point is that such standards are arguably less important than the vast number of standards for which arguments about legitimacy and legality are futile.

Another observation flowing from Table 1 is that the classic distinction—the controversial heart of the trade and environment debates from the earliest days—between standards based on PPMs and standards based on products is not all that useful. From the perspective of a developing country exporter, there is no real difference between the two. Both cause just as much hardship, both force exporters to change their production processes, and for both it would be good to have more developing country input on standards being developed. Thus, from an economic point of view, leaving the legal distinctions behind, there is little real difference between a PPM-based and a product-based standard.[13]

Turning trade-related environmental standards into opportunities

This section focuses on those trade-related environmental standards that are not protectionist, and/or are not legally contestable. Exporters must either meet such standards, or fail to export to the buyers they cover. How can we decrease the difficulty that such standards cause exporters, allowing them to become simply better specifications of consumers' tastes? How can we turn them from obstacles into opportunities for sustainable development?

The research suggests two distinct bodies of tasks to be shouldered in this effort: one by exporter governments and one by the standard-setters. We consider each below.

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12 These regulations, extensively surveyed by Baumuller (2003), may in fact be aimed at protecting both human health *and* the environment.

13 Note that recent WTO jurisprudence—i.e., the Shrimp-Turtle Appellate Body rulings—mean that there is not much of a legal distinction either. Both are legal, but are subject to (different) WTO rules in their design and implementation.

The role of exporter governments

Rotherham (2003a) argues that most developing countries do not have adequate national-level infrastructures to help exporters cope with the ongoing tightening of trade-related environmental standards, and suggests that most do not have the resources to invest in creating it. The type of supportive infrastructure needed is suggested both by Rotherham and by the various TKN research results:

- a national standards body with various supportive functions;
- accredited institutions of conformity assessment; and
- policy management.

A national standards body. The primary role of standards bodies is to set standards, both at the domestic and international levels. But such a body can also serve a number of other useful functions. One key role is to compile and make available the standards of interest to exporters in their key target markets. Another is to warn exporters of standards in the pipeline, and solicit, collate and relay their input to the standard-setting governments (in the case of government standards) during the comment periods mandated by the WTO's Agreement on Technical Barriers to Trade.[14] Based on the experience of China's dyestuffs and textiles industry, for example (primarily relating to the German ban on azo dyes, which was badly implemented), PRCEE (1999) strongly recommended such a body be created:

> "There is a need to establish a mechanism to track and release information in foreign environmental standards and requirements to products including those of dyestuffs. … This will help raise [industry's] awareness of trade and environmental issues, make timely necessary adjustment for the industrial structure and avoid any possible risks and losses."

In a similar vein, in light of losses to exporters who faced unexpected bans in the surgical goods and shrimp export sectors, SDPI (1999) argued that "the government needs to be proactive in acquiring information about environmental standards and passing this information on in a timely manner to industry working closely with the various industry chambers."

Another key role for such a body is participation in the drafting of standards at the international level, in bodies such as the Codex Alimentarius and the International Organization for Standardization (ISO). As with the comment period mandated in the case of government standards, this kind of participation helps ensure that the particular concerns of developing country exporters

14 For standards, the TBT calls for a 60-day comment period (TBT Annex 3 (*Code of Good Practice*), para. L). For technical regulations, no period is specified; draft measures should be published "at an early appropriate stage," and members should "allow reasonable time for other Members to make comments in writing." (TBT Art. 2.9.4)

can be taken into account in the drafting of standards (though national governments are still able to draft standards that are stricter).[15]

A final role that can be played by such a body is to spearhead the proposal and drafting of international standards in areas of interest to developing countries. Rotherham (2003a) notes, by way of example, the absence of such standards for formaldehyde residues on textiles, for environmental PPMs for cut flowers, and in other areas where developed country and non-governmental standard-setters fill the void with widely varying norms.

Finally, to perform all these tasks effectively, the standards body needs a lively network of interested exporters, and good channels of communication. This will serve to help define national interest in the area of standards, as well as to give exporters up-to-date information on the standards they must meet in target markets.

There is an obvious role for governments in setting up and supporting the operations of such a body, as per the TKN policy recommendations from above. And there is a clear need for financial assistance to those governments in doing so (a theme we return to below). In the end, the existence of a single body is not so important as the performance of the tasks described above, by whatever institutional means. The possibility of an international body to compile importers' standards is discussed below. There is also the possibility of cost-saving regional approaches, where there are a number of small nearby countries with similar export patterns, such as in the Caribbean or South-East Asia.

Accredited institutions of conformity assessment. Conformity assessment is the certification that a standard has in fact been met. It increasingly involves sophisticated and expensive equipment (testing in the tenths of parts per million is common), and specialized knowledge. This type of activity is most frequently carried out by one of a handful of multinational firms. In theory, conformity assessment could be carried out by domestic-based organizations, but in many less developed countries the facilities often simply do not exist; start-up costs are too high, and the market for their services is too small. Rotherham (2003a) notes that using foreign certifiers increases costs—since they charge higher rates for field work, and since they may be exercising some monopoly power. CIPMA/RIDES (2003) argue that it also means a lack of accountability on the part of the certifiers, relative to what there would be in the case of a domestic body.

Even in the case where there are domestic certifying bodies, if they are not accredited by the importers as able to do certification, they cannot be used. Accreditation is typically an expensive and difficult process. CIPMA/RIDES (2003) note that when the Chilean organic certifier Certificadora Chile

15 If an international standard exists, and national governments want to adopt stricter standards, the WTO rules oblige them to clear a number of hurdles designed to prevent unfair trade restrictions.

Orgánico was approached by the government with an offer of support for a bid to become accredited by the EU, CCO declined, citing the high costs involved. There are obvious economies of scale involved in providing certification services in more than one country to the same standard—part of the reason for the dominance of multinational firms in this field. Some countries and buyers (and some labelling schemes, such as the Forest Stewardship Council) restrict the number of accredited entities, creating problems for those in the hinterlands of conformity assessment.

Again, there is an important role for governments here in supporting the accreditation of their domestic (or regional) agents of conformity assessment. The key obstacles are primarily financial: the agent needs to own equipment that is up to the task of the testing needed, it needs to employ highly-trained specialists, and it needs to pay for the costs of accreditation. (CIPMA/RIDES (2003) note that accreditation to the Organic Accreditation Service of the International Federation of Organic Agriculture Movements costs some US$14,000 per year). And again there is an obvious potential role for regional collaboration in the right circumstances.

Policy management. CIPMA/RIDES (2003) use the term "policy management" to mean the active coordination among the various ministries, and between them and the involved industries. In the present case, that coordination would be in the service of helping exporters cope with trade-related environmental standards. This type of policy management is a challenge in both developed and developing countries.

In part, this is because of the number of ministries or departments involved. In Chile, for example, the issue of organic wine exports involved the Ministry of Foreign Relations (under which there was the Department of Sustainable Development and the Export Promotion Agency), the Ministry of Agriculture, the Ministry of Economy (under which there was the Chilean Economic Development Agency and the National Technology Centre's Clean Technology Centre) and the National Commission on the Environment.

Peck (1999) describes what seems a highly successful case of policy management in phasing out ozone-depleting substances (ODS) from Singapore's production processes, in line with its Montreal Protocol commitments. The efforts there involved:

- a tender and quota allocation system for CFCs, the main ODS in use;
- technical assistance and information dissemination;
- an ODS-free process verification scheme; and
- financial incentives for SMEs.

These programs were a joint product of many agencies. The overall coordinating body was the Ministry of the Environment. Also involved were the Singapore Trade Development Board, the Singapore Productivity and Standards Board, and the Singapore Economic Development Board. This kind of successful inter-departmental collaboration is a useful demonstration that policy management is possible.

PRCEE (1999) describes another such case, where the authorities for the textile and dyeing sectors in China worked together with the Department of Commodity Inspection in response to the German ban on azo dyes in textiles in 1994—a ban that covered 104 varieties of dye used in China at the time. PRCEE (1999) notes that "[The] starting point is that they consider the ban as an opportunity to increase the environmental awareness of the textile and dyeing sectors in China and upgrade the quality and categories of dyes to expand the market share of dyes so as to promote the development of the dyes in China." In Shanghai, a collaboration of the Municipal Economic Commission and the local, the dye, textile and trading companies worked to develop a large number of substitutes for the banned dyes, some of which are actually exported. This is an excellent example of collaboration to turn adversity into opportunity.

The role of standard-setters

There are a number of ways in which the setters of standards—whether they be governments, private buyers or non-governmental labellers—can help to minimize the negative impacts in developing countries of trade-related environmental standards. To a great extent, they involve taking on board the principles and guidelines already laid down in the TBT's Code of Good Practice. Many of these potential solutions are recommended by the TKN researchers, and some are demonstrated by negative example.

Notify draft standards with adequate lead time for comments. In the case of government standards, this is a mandated obligation as per the TBT Agreement, but is not always observed. It is not an easy or quick process to garner domestic input on draft standards and feed it back to the standards setter. In the case of non-governmental standards, buyers usually give suppliers adequate notice. Eco-labelling organizations have a poor record of soliciting input from foreigners on draft standards.

Include adequate information with standards and draft standards. For example, the German azo dye ban caused some havoc in China since, among other things, it did not specify a testing method. As such, textile manufacturers had no way of knowing whether domestic dye varieties would pass the new criteria, and had to quickly switch to buying imported dyes.

Take comments into account. It is one thing to solicit comments on draft standards, but is quite another to take them into account. This is actually *required* of governments under the TBT Agreement's Article 5(6)(4).

Longer transition times. In light of the special difficulties faced by developing country exporters in meeting trade-related environmental standards, it may be appropriate to offer them longer lead times in meeting any new standards.

Transparency. Existing trade-related environmental standards, and criteria for conformity assessment, should be easy to acquire. In the case of government standards and criteria, there should be a national point of enquiry to which interested exporters and national standard bodies can go to find what standards prevail. This is an obvious point, and is in fact a requirement under the TBT Agreement's Article 10(1), but compliance is patchy.

Technical assistance/capacity building. It was noted above that there was a great need for assistance in the establishment of the domestic institutions for managing trade-related environmental standards. In fact, such assistance should be a good fit with the mandates of most developed country official development agencies. In helping to establish national standards bodies, and in helping foster accredited conformity assessment bodies, developed countries can help increase the competitiveness of developing country exporters, many of whom are important engines of development in their respective countries.

The need for assistance and capacity building can also extend to help in meeting new standards, where they involve new technologies, or technologies not currently available in exporting countries. In an ideal world, such efforts would include some forms of technology transfer, but at an absolute minimum they should include full information about the relevant testing methods, and about the use and availability of substitutes for banned products/technologies. PRCEE (1999) noted that the German ban on azo dyes in textiles failed on all these counts.

With respect to exporter information on existing standards, the Chilean research recommended, on the basis of both the organic viticulture research and the research on sustainably managed forest products, the establishment of an international institution charged with collecting and disseminating information on standards of particular interest to developing country exporters. This is an interesting alternative to having this task performed by a number of different national-level bodies, as suggested above. But it would need some sort of international financial support, which might be in part forthcoming from the standard-setting countries.

Accreditation. All three types of standards-setters are at various times guilty of making the accreditation process unfairly difficult. Non-governmental standards-setters such as the Marine Stewardship Council, the Forest Stewardship

Council and the International Federation of Organic Agricultural Movements all limit and control the supply of accredited certifiers, with the frequent result that only developed country certifiers can afford to get accredited. Most governments insist on certification being done by their own domestic agents for certain standards, refusing to grant accreditation to foreign certifiers. As CIPMA/RIDES (2003) found in Chile, the process for getting local certifications recognized as equivalent to those done in the EU (technically, an exercise in "mutual recognition") is costly complex and lengthy, and is still not complete after years of effort. Rotherham (2003a) describes a move by the international quality assurance community to rationalize the accreditation process, for example drafting guidelines on how an applicant must demonstrate competence. This is a welcome move, and one to which standard-setters should sign on without delay.

Conclusion

The TKN research shows a great deal of concern among developing country policy-makers and exporters with trade-related environmental standards. Given the stakes involved this is understandable, but the standards in question are rarely contestable under trade law. The research also gives us vivid insight into the nature of the problems faced by exporters, and into some of the ways in which exporting governments and standard setters could ease their burdens—primarily through developing institutional capacity at the national/regional level, and through fostering organizational capacity within exporting firms. In this way it might be possible for trade-related environmental standards to serve as opportunities to foster sustainable development, rather than as obstacles to development. This theme of opportunity is the focus of the next chapter.