

DISCUSSION PAPER

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Eco-labels: Trade Barriers or Trade Facilitators?

Introduction

Eco-labelling was first initiated by Germany in 1978 with the release of the “Blue Angel” programme. The objective was to enlighten consumers about the environment friendly nature of various products. Eco-labelling was an instrument for evaluating, authenticating and standardising “green” claims and informing consumers about these. An eco-label was meant to certify that a product was more environment-friendly than most in the same product category. This not only certifies the quality of a particular product but also provides information about the whole life cycle, including generation of inputs, production processes, consumption and waste disposal.

Agenda 21, revealed at the United Nations Conference on Environment and Development (Earth Summit), held in Rio de Janeiro, on June 14, 1992, recommends governments to promote environmental labelling to facilitate change in consumption patterns and thereby safeguard the environment for sustainable development. It explicitly mentions environmental labelling as an instrument for improving the environmental quality of products.

By the late 1980s and early 1990s over 15 independent national and multi-national eco-labelling programmes were established. Till date, most countries – both developed and developing – have established eco-labelling programmes in many different forms at local, national, regional and international levels. The relevance of this subject has been highlighted through its implications with trade relations, economic development and the environment.

This discussion paper evaluates the potential of eco-labels to be trade facilitators and conversely trade barriers. Which potential is harnessed more depends upon factors such as technology transfer, information dissemination, the modalities of designing and administering these labels etc.

The paper takes the approach of ‘first principles’ by defining eco-labels and elaborating on objectives and classification of these labels. It brings out the potentially conflicting impacts of eco-labels in terms of protectionism and trade facilitation and illustrates this discussion through an elaboration of the Indian case. The paper analyses the relevance of eco-labels for the WTO and vice-versa, and concretises this discussion through elucidation of some of the major disputes triggered by eco-labels.

Formal Definition, Objectives and Classification

In its 1991 study, Environmental Labelling in the Organisation for Economic Co-operation and Development (OECD) countries, OECD defined ‘environmental labelling’ as the ‘voluntary granting of labels by a private or public body in order to inform consumers and thereby promote consumer products which are determined to be environmentally more friendly than other functionally and competitively similar products’. In other words, an eco-label was defined as a recognisable symbol granted by an independent organisation and placed on certified products.

Similar definitions were brought out by various other bodies, such as the Secretariat of United Nations Conference on Trade and Development (UNCTAD) in 1993¹ and the General Agreement on Tariffs & Trade (GATT) Secretariat in 1992². To be brief, it is an attempt to harness market forces to reward responsible environmental behaviour. For an eco-label to be useful it should result in a premium on the price of the labelled product. A precondition for the attainment of such premiums is a significant level of environmental awareness among consumers. Given that empirical studies show a positive relationship between such awareness and economic development, eco-labels are likely to have a significant impact only through consumer behaviour in developed countries.

Objectives

The various objectives of eco-labelling, on the basis of a review of literature and analytical reasoning, may be stated as follows:

- Protect the environment and at the same encourage sustainable management and consumption of resources.
- Create awareness among consumers regarding the environmental effects of a product that is to be consumed.
- Offer incentive to manufacturers and importers for reducing adverse environmental impact of products.
- Enhance environmental standards of the commodity and at the same time encourage environmentally sound innovation.
- Give such manufacturers a competitive advantage over other manufacturers.

To be brief, eco-labelling operates as an imperative and genuine means to protect and conserve the environment, simultaneously promoting sustainable production and consumption patterns.

Types

After the initial success of the International Organisation for Standardisation (ISO) 9000 standards in regard to total quality management, the ISO began its work on a new series of standards relating to environmental management systems, an element of which was related to eco-labelling. Within a short span, the organisation came up with certain eco-standards popularly known as the ISO 14020 series. As per the series there are three types of eco-labelling:³

- ISO 14024 (Type I) – a voluntary, multiple criteria based, third party programme that awards a license authorising the use of environmental labels on products indicating overall environmental superiority of a product within a product category based on life cycle considerations
- ISO 14021 (Type II) – informative environmental self-declaration claims
- ISO 14025 (Type III) – voluntary programmes that provide quantified environmental data regarding a product, under preset categories of parameters set by a qualified third party and based on life cycle assessment, and verified by that or another qualified third party

This series of standards, ISO 14020, has been recognised as international best practice and constitutes an accepted approach to delivering environmental labelling and declarations on products and services.

Relationship between Eco-labelling and Trade

Though the use of eco-labels by governments, industry and non-governmental organisations (NGOs) kept mounting, there was a growing distress within the trade fraternity at both national and international levels. This distress was primarily due to the fact that domestic producers would now be better positioned than exporters to influence the choice of product groups and the criteria used for awarding the labels. In other words, the concern was that eco-labelling would adversely affect export competitiveness and henceforth act as a non-tariff trade barrier.

Besides, these standards are seldom established in consistency with established international standardisation rules that emphasise the need to be non-discriminatory, transparent and open. On most occasions, foreign producers are compelled to meet criteria that are not relevant in their country of production. For instance, in a country in which SO₂ emissions during production are not a matter of concern the eco-labelling requirement would impose extra costs⁴.

Developing countries are more vulnerable to this discriminatory trade impact, particularly in the case of small and medium enterprises (SMEs), as most of the new product categories being selected for inclusion under eco-labelling schemes are of particular interest to them. In addition, international standards are always too strict for developing countries, especially small resource constrained ones, as these lack resources to undertake costly testing, verification, plant inspection, and certification procedures required for compliance with requirements.

Other than high cost of compliance, lack of adequate knowledge about such programmes also contributes to adverse effects. Producers in many countries have little or no information about certain eco-label programmes; they have no clue about certification needs or where and by whom certification is to be provided. In addition, advanced technologies used to develop eco-labels are often patented and difficult to access, thus putting developing country producers at a disadvantage. Accessing such patented technologies can be very expensive, often unaffordable.

Therefore, effects of eco-labelling are often two fold: it effectively addresses environmental concerns with respect to production and consumption of a product and thus facilitates trade but at the same time can be used as an effective trade barrier. In fact, the Members and Secretariats of the OECD, UNCTAD and World Trade Organisation (WTO)/GATT have put several proposals forward to address the trade effects of eco-labelling schemes. These include proposals for harmonisation, mutual recognition and greater transparency in the operation of labelling schemes⁵. Such a move could facilitate the implementation of eco-labelling schemes in a manner that can encompass diverse levels of

technological and socio-economic development and simultaneously take into consideration the exceptionality of the environmental conditions in each country, in addition to the recognition of international environmental responsibilities.

The Agenda 21 and the Rio Declaration, two non-binding instruments, also address issues relating to environmental labelling schemes. In Agenda 21 there is a clear endorsement of environmental labelling in Chapter 4(B)(c). Similar is the case with the Rio Declaration, where Principle 10 and 12 assign importance to environmental labelling schemes.

Eco-labelling and Trade in India

The mounting numbers of new eco-labelling schemes in use by various countries, together with rapid changes in ecologically friendly products are generating a lot of confusion and apprehension in the minds of producers/exporters in developing countries and transition economies.

There are concerns that developing country trade, especially India's, could be severely affected by the rigid environmental measures of rich and developed nations, particularly eco-labels. This is because meeting standards for eco-labels may lead to prohibitive costs for developing countries, and at the same time proves to be difficult because of the paucity of necessary skill and technology. This concern is heightened by the fact that the role of small scale industries in international trade is not so small. Nearly 60 percent of Indian industrial production is by such enterprises, automatically implying significant participation in international trade.

The mentioned concerns were raised largely when such schemes affected the textile and leather sectors in India because of exorbitant cost of compliance mixed with difficulties in accessing technologies and so on. For instance, cost of compliance with eco-labelling schemes by Indian footwear exporters was around 33 percent of the export price⁶. According to a study carried out in India by Ralph Piotrowski and Stefan Kratz (1999)⁷, the costs of testing for compliance with eco-label requirements for footwear could lead to a cost increase of up to 50 percent for some firms.

Similar is the case with textile sectors where stringent environmental standards imposed by developed countries have affected Indian exports, especially because nearly 40 percent of India's textile exports are directed to the European Union (EU). High costs have been borne by Indian textile firms, particularly SMEs, constrained by lack of technical expertise and manpower in making suitable changes.

The German textile industry in 1993 introduced two types of eco-labels; the MST (*Marke scadstoffgeprüfter Textilien*) that relates to attributes of the final product and the MUT

(*Marke umweltschonender Textilien*) that relates to the production process of textiles. German firms were able to comply with these standards easily as these themselves were involved in development of the standards and hence already possessed the required technical competence. However, this was not the same for India or other developing countries: these had to ensure compliance by importing dyestuffs from Germany or other EU countries, thus resulting in an exorbitant increase in production costs which in effect corresponded to the cost of such certification. In addition, with respect to MUT, an on-site inspection was required, which meant further additional cost.

Germany had also banned imports of textiles and clothing using amine-based azo dyes, which are harmful for the health of textile workers. These dyes comprise 75 percent of the dyes produced and used in India⁸. Moreover, the use of dyestuffs such as cobalt blue and sulphur black were also totally banned in the international market. Though workable substitutes have been explored, switching over to them entails an investment of over US\$13mn, mainly for the upgradation of technology and installation of new treatment plants meeting required standards⁹.

Eco-labelling and WTO

Eco-labelling was once talked over with much fanfare in the WTO within the Committee on Trade and Environment (CTE) and the Committee on Technical Barriers to Trade (CTBT). However, no concrete decision could be taken other than that to assist in raising awareness of the need to make trade and environmental policies both compatible and mutually supportive.

Part of Doha Ministerial Declaration, prepared by the CTE, summarises member's opinions on this issue:

Most Members agreed that voluntary, participatory, market-based and transparent environmental labelling schemes were potentially efficient economic instruments in order to inform consumers about environmentally friendly products. As such they could help move consumption on to a more sustainable footing. Moreover, they tended, generally, to be less trade restrictive than other instruments. [World Trade Organisation, Report to the fifth Session of the WTO Ministerial Conference in Cancun, WT/CTE/8, 11 July 2003, p.8]

Quite a few Agreements under the WTO have rules related to eco-labels – the GATT¹⁰, the General Agreement on Trade in Services¹¹ (GATS), the Agreement on Technical Barriers to Trade¹² (TBT), and the Agreement on Sanitary or Phyto-sanitary (SPS) Measures¹³. The WTO issued the *Code of Good Practice for the Preparation, Adoption and Application of Standards* as Annex-3 to the section on

Technical Barriers to Trade Agreement in order to facilitate eco-labelling and standard setting in a manner that does not conflict with agreed international trade frameworks. Thus, each of these agreements has its own set of rules but there are overlaps between sets. However, as these agreements were negotiated mostly without specific knowledge of or concern about eco-labelling, a good deal of uncertainty remains about which agreements applies to eco-labels, under what circumstances, and to what extent¹⁴.

For the WTO, the key point is that labelling requirements and practices should not discriminate either between trading partners (most favoured nation principles), or between domestically produced goods or services and imports (national treatment).

Eco-label and Trade-Environment Disputes

As environmental labels have a trade distorting effect, there are a series of verdicts by the GATT/WTO on the same. Though hardly any of these disputes discussed eco-labels directly, they did shed much light on the evolving treatment by the WTO on aspects of labelling of products. Most of the disputes arising under the GATT system were closely related to the subject of eco-labels such as cases pertaining to *Malt Beverages*, *Auto Taxes*, and the *Tuna-Dolphin* issue. Since the establishment of WTO, the most relevant disputes have been *Asbestos*, *Sardines*, and the line of *Shrimp-Turtle* cases.

These disputes, brought before the GATT/WTO, have highlighted the conflict faced by governments who wish to pursue domestic environmental policies and at the same time comply with WTO rules¹⁵. For instance, WTO principles of non-discrimination require that like products are treated equally irrespective of the country of origin. This poses a problem for the environmental lobby since it is often the production method that determines the degree of environmental friendliness rather than the product itself.

Some disputes about eco-labels brought before the GATT/WTO are elaborated below:

i) **US Restrictions on Imports of Tuna¹⁶**: In the much cited Tuna-Dolphin case in 1991, Mexico used the most-favoured nation (MFN) clause of Article I:1 GATT against the mandatory “dolphin-safe” label in the US, as Mexico felt discriminated by the label. However, the panel in setting aside the claim noted that the labelling provisions of the Dolphin Protection Consumer Information Act (DPCIA) do not restrict the sale of tuna products as these tuna products can be sold freely both with and without the “Dolphin Safe” label. Nor do these provisions establish requirements that have to be met in order to obtain an advantage from the government. Any advantage, which might possibly result from access to this label, depends on free choice by consumers in giving preference to tuna carrying the “Dolphin Safe” label. The labelling provisions, therefore,

Box 1: Viewpoints Expressed in the CTE on Eco-labelling

Most of the substantial discussions on eco-labelling in the CTE took place prior to the 1996 Singapore Ministerial Conference. Numerous standpoints have been taken in the CTE on the extent to which eco-labels are covered by and are consistent with WTO rules, and several proposals have been put forward on how to accommodate the trade concerns that they raise. Although it may be argued that there is a distinctly Southern perspective in the CTE on this issue, it cannot be stated that a distinctly Northern viewpoint has emerged. It is important to note that, during the CTE’s discussion of this issue, a number of delegations stressed the utility of eco-labelling schemes as instruments of environmental policy.

The different positions on eco-labelling taken in the CTE have included the following:

- (a) Eco-labels are both covered by and consistent with the TBT Agreement.
- (b) Eco-labels are not covered by the TBT Agreement, but scope needs to be created.
- (c) Eco-labels are not covered by the TBT Agreement. Creating scope for them could endanger the trading system. Tremendous care should be exercised in addressing this issue in future. A combination of increased transparency, equivalence, and mutual recognition could help alleviate their effects on trade.
- (d) Eco-labels are inconsistent with the TBT Agreement, and should not find any accommodation within the WTO system. A combination of increased transparency, equivalence, and mutual recognition could help alleviate their effects on trade.

Source: Doaa Abdel Motaal, *The Agreement on Technical Barriers to Trade, The Committee on Trade and Environment, and Eco-labelling*, <http://www.earthscape.org/p3/sag01/P223-238.PDF>

do not influence the right to sell tuna or tuna products, nor do these make access to a government conferred advantage affecting the sale of tuna or tuna products conditional upon the use of tuna harvesting methods. Thus, whether or not an eco-label contradicts the MFN principle depends on whether or not the country issuing the eco-label favours or discriminates against another country selling the labelled product through such issue.

The Panel also commented on Article IX:1 as Mexico considered the labelling provisions of the DPCIA to be pertinent for requirements falling under this Article. Here also the panel disagreed. The panel noted that Article IX refers to “Marks of Origin” of imported products. Besides, the Article does not contain a national treatment but only a MFN requirement, which indicates that this provision is intended to regulate marking of origin of imported products but not marking of products generally. Hence, the Panel held that the labelling provisions of the DPCIA do not fall under Article IX:1.

The environmental community greeted this decision on labelling by the Panel which further expressed the opinion that eco-labels would be a powerful tool for environmental policy advances besides providing a means for settling some of the more troubling trade and environmental disputes.

ii) European Communities – Trade Description of Sardines¹⁷ : In the Sardines Dispute, the WTO’s Appellate Body held that a EU regulation, which allowed only one fish species to be labelled as ‘sardines’, violated the WTO’s Agreement on TBT. The Appellate Body made several conclusions regarding the TBT Agreement that may have important implications for eco-labelling and other regulations that define product characteristics.

According to a 2005 study¹⁸, first, it ruled that the obligations of the TBT Agreement are triggered whenever a member country requires specific names to be used for marketing specific products or otherwise defines the characteristics of a product. Merely ‘naming’ or ‘defining’ a product may constitute a ‘technical regulation’, even if the name is based on characteristics intrinsic to the product. Second, it also suggested that the TBT Agreement strongly favours compliance with an international standard. Both the Appellate Body and the Panel scrutinised EU’s argument that the international standard was an ‘ineffective or inappropriate’ means to fulfil the legitimate objectives of its regulation.

Conclusion

Eco-labelling is thus an effective way to protect the environment, provided it is non-discriminatory, with principles and procedures that have wide acceptance both nationally and internationally. But for attaining the same

countries need to harmonise different eco-labelling schemes, ensure mutual recognition and technical assistance to developing countries so that such schemes can become more effective and have a positive rather than constraining effect on trade.

In order to reduce any future negative impact of eco-labelling on exports from developing countries, certain measures – for instance, harmonisation with other eco-labels, technical assistance to enterprises of developing countries to comply with associated environmental standards, provision of more detailed information, and adequate notice to developing countries before allowing the use of these labels – need to be taken urgently by developed countries. The duty lies not only with respective national governments but also with the concerned industries and agencies that come up with such schemes.

In addition, national governments of developing countries need to provide technical assistance and capacity building to their exporting companies in order to upgrade their manufacturing facilities to enable compliance with elevated environmental standards. It is also the responsibility of each government to ensure that the eco-labelling schemes under its purview are transparent and the resulting labels deliver on their claims.

An eco-label when implemented properly helps to facilitate developing country exports as the label enhances trust of the product among developed country consumers. When implemented in a biased, casual or non-transparent manner it might pose a significant barrier to developing country exports.

Most importantly, the vast differences between the environmental concerns of various countries should be recognised. Renowned sociologist, Elizabeth Barham emphasises the importance of geographical context in administering eco-labels in a transparent and accountable manner. Yet when one imposes conditions such as the ‘MFN status’ being accorded to each and every trading partner, the use of eco-labels for constraining potentially hazardous behaviour inevitably gets constrained. Eco-labels thus need to pass the test of both environmental effectiveness and WTO compatibility before being put into practice. The satisfaction of both criteria greatly reduces the range of admissible labels but is at the same time necessary for ruling out some types of protectionism and ensuring fair treatment of economic interests of all countries.

Mutual recognition of eco-labels is also one important systemic step which can make their use more effective. There is a need for developing a roadmap in the direction of mutual recognition of eco-labelling schemes through increased cooperation among the relevant environmental bodies of developed and developing countries.

An important factor determining the effectiveness of eco-labelling schemes is greater consumer awareness. The effectiveness of any labelling programme largely depends on whether consumers actually choose to purchase the product with a label, instead of a like one without a label. Therefore, consumer education is crucial to the success of these environmental programmes. The involvement of and support by environmental NGOs, consumer organisations and the media are key factors that have contributed to

increasing the level of consumer awareness of environmentally preferable products in certain countries. However, enhanced consumer awareness of the eco-label is trade enhancing when the mentioned governmental measures needed for ensuring a level playing field among producers all over the world and providing transparency and accountability are implemented. In the absence of such measures, enhanced consumer awareness might actually lead to these labels becoming trade barriers.

Box 2: How to Reduce the Trade Impact of Eco-labels

The real and potential problems faced by developing countries in relation to environmental labelling are a consumer issue. Consumers have a right to expect that the products they buy be produced in as environmentally friendly a manner as possible, irrespective of source. However, consumers also have a responsibility to ensure that the prospects for advancement by developing countries are not unjustifiably hampered by a desire to promote 'greener' production. In this light the following steps can be taken now to make environmental labelling schemes more open and responsive to developing country producers.

- Outside participation and procedural openness must increase. Developing countries often do not have access to the process of choosing and applying for eco-labels. Eco-labelling bodies need to involve developing country producers whenever a product category is chosen that is of interest to them.
- Processes and methods of investigation must be standardised. The processes and methods of investigation used by environmental labelling schemes need to be standardised. Environmental labelling bodies need to follow an internationally agreed Code of Good Practice, similar to the one agreed to at the GATT under the TBT Agreement. This must involve, not just guaranteed access for developing country producers, but a guaranteed access for consumer organisations.
- Schemes must work toward the principle of 'different, but equal'. Eco-labelling schemes must come to terms with the fact that different countries use different production methods and that the one followed by their domestic industries is not necessarily the only acceptable way of operating. Work must be carried out to develop a means of labelling products manufactured under differing methods.
- Countries must recognise each other's labels. Work must be carried out to allow countries with different labels and schemes, based on different environmental criteria, to mutually recognise each other's labels.
- Developing countries must be given preferential access to 'green' technology. The transfer of 'green' technology to developing countries should be at the centre of any efforts to reform production process on a global scale.

Pradeep S Mehta & Phillip Evans, Greening Consumer Choice? Environmental labelling and the Consumer, Briefing Paper, CUTS, September 1995. (Originally written for Consumers International)

Endnotes

- 1 Environmental labelling is the use of labels in order to inform consumers that a labeled product is environmentally more friendly relative to other products in the same category.
- 2 Environmental labelling is system for the usually voluntary granting of labels by a private or public body in order to inform consumers.
- 3 Introduction to Eco-labelling, Information Paper, Global Eco-labelling Network, accessible at <http://www.gen.gr.jp/pdf/pub_pdf01.pdf>
- 4 Rene Vossenaar and Roland Mollerus, 'Eco-labelling and International Trade: Possible Effects on Developing Countries', *Eco-labelling and Other Environmental Quality Requirements in Textiles and Clothing – Implications for Developing Countries*, p.59, International Trade Centre UNCTAD/WTO, ITC, (1996).
- 5 Arthus Edmond Appleton, *Environmental Labelling Programmes: International Trade Law Implications*, (London: Kluwer Law International, 1997).
- 6 The Study of the Effects of Environmental Measures on Market Access, Communication from India, Committee on Trade and Environment, WT/CTE/W/177, October 27, 2000.
- 7 Piotrowski Ralph and Stefan Kratz (1999), "Eco-Labeling in the Globalised Economy", IPG 4/99430, accessible at <http://www.fes.de/ipg/ipg4_99/ARTPIOTROWSKI-KRATZ.PDF>
- 8 Changing production and consumption patterns, Economic and Social Council, United Nations, E/CN.17/1996/5.
- 9 Sachin Chaturvedi and Gunjan Nagpal, 'WTO and Product-Related Environmental Standards: Emerging Issues and Policy Options', *Economic and Political Weekly*, 38(1), (2003), page. 66-74.
- 10 Article I (Most favoured nation clause), Article III (Non-discrimination), Article IX (Marks of origin) and Article XX (General exceptions).
- 11 Article XVII (National Treatment) Article XVI (Market Access) and Article III (Transparency).
- 12 Preamble of the Agreement, Annex 1.1 (Technical Regulation definition), Annex 1.2 (Standards definition), Article 2.2 (which states certain degree of trade restriction for environment could be justified), Annex 3 (Code of Good Practice).
- 13 Article 2.1 (Right to take SPS measures), Article 2.2 (Scientific evidence), Article 2.3 (Discrimination), Article 3 (Harmonisation with international standards), Article 5 (Risk assessment).
- 14 2003 Global Eco-labelling Network (GEN) Annual Report: Full Text of Section 2 and 3, September 2004, accessible at <http://www.gen.gr.jp/pdf/03annrpt_full_2and3.pdf>
- 15 Daniel Melser and Peter E. Robertson, Eco-labelling and the Trade-Environment Debate, *The World Economy*, Vol.28 (1), January 2005, p.49.
- 16 United States – Restrictions on Imports of Tuna, Report of the Panel, (DS21/R - 39S/155).
- 17 European Communities – Trade Description of Sardines WT/DS231/R, May 29, 2002 and WT/DS231/AB/R, September 26, 2002.
- 18 Siwon Park and Chris Wold, 'An Analysis of the WTO Appellate Body's Report in the Sardines Case: Implications for Ecolabels', August 2005, accessible at <http://legacy.lclark.edu/org/ielp/objects/sardines_ecolabel.pdf>

This Discussion Paper is written by Simi T B, Assistant Policy Analyst & Researcher (International Trade Law), CUTS Centre for International Trade, Economics & Environment

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