6. Eco-labelling and International Trade

Wendy Hollingsworth

Introduction

Eco-labelling is a process used to inform the consumer of the environmental characteristics of a good or service. The introduction of the Blue Angel eco-seal in Germany in 1977 has given impetus to many other countries to introduce stringent packaging legislation. To-date over thirty countries have passed legislation and instituted eco-labelling programmes and there are presently more than sixty eco-labels in existence globally. The number of products covered by these eco-labels is staggering. For example, in the United States there are at least twenty different eco-labelling programmes covering over three hundred (300) different products. Likewise, Canada's Environmental Choice Eco-labeling programme has awarded Environmental Choice eco-labels to over two thousand (2000) products and services provided by about two hundred (200) companies.[1]

Eco-labelling provides a degree of assurance to consumers that products conform to some minimum standard established by an entity such as public or private sector institutions or non-governmental organisations. Producers have successfully used eco-labelling and certification schemes to promote environmental stewardship and as a tool to differentiate and market their products on the basis of their environmental features. An eco-label awarded to a particular product (or process) does not guarantee that the product (or process) has no environmental impacts. What it guarantees is that, compared to similar products or processes, producers have taken measures to minimize negative environmental impact. In this regard eco-labels not only inform the public about product quality but also about its entire life cycle including for example product inputs, the production processes, its consumption and its waste management.[2]

The terms eco-label, environmental label and ecological label have been used interchangeably. The term eco-label or eco-labelling as used within the context of this article will therefore include these other terms.

Consumer demand has been a major factor in forcing manufacturers to take effective steps to make their products more environmentally friendly. Many eco-labelling schemes have been established in the major industrial countries. Some developing countries such as Brazil, India and Korea have

[1] WTO-CTE Document: Information relevant to the consideration of the market access effects of eco-labelling schemes (WT/CTE/W/150), 29 June 2000.

[2] Susanne Dröge. 2001. Ecological labeling and the World Trade Organisation. German Institute for Economic Research. Discussion paper No. 242.

Box 1. At a Glance: Trade and Environment Review (12)

1971	GATT Secretariat report on the implications of environmental protection policies on international trade.
1972	UN conference on Human Environment GATT establishment of the Group on Environmental Measures and International Trade (EMIT).
1973-79	Tokyo Round of trade negotiations – the Tokyo Round Agreement on Technical Barriers to Trade (TBT) also known as the Standards Code negotiated.
1982	GATT Ministerial meeting on control of exports of products that can harm human, animal and plant life and health and the environment.
1986-94	Uruguay Round of trade negotiations where environmental issues were addressed in several agreements (TBT, trade & services, agriculture, subsidies and countervailing measures, SPS and TRIPs).
1989	Working Group on exports of domestically prohibited goods and other hazardous substances
1991	European Free Trade Association requested the GATT Director General to convene the first meeting of the EMIT group. (20 years after its formation) US – Mexico tuna dispute clearly focused attention on the implications of environmental protection policies and trade.
1992	UN Conference on Environment and Development (UNCED) Earth Summit in Rio adoption of Agenda 21.
1994	Uruguay Round trade negotiations concluded with the Agreement establishing the WTO and the adoption of the Ministerial Decision on Trade and Environment and the creation of the WTO's Committee on Trade and Environment (CTE).
2001	Doha Ministerial Declaration including discussions regarding trade and environment interactions and impact on trade flows.

developed their own programmes or are in the process of enacting appropriate legislation to commence these programmes.

With the international increase in eco-labelling programmes there is concern that the initial policy intent behind the development of such schemes (i.e. environmental protection, sustainable development and consumer information) has been superceded by protectionists policies geared to protect local industry.[3] There is therefore growing concern internationally for the potential impacts of eco-labelling and certification schemes on market access of products and services in general, specifically products originating from developing countries.

It is believed that the numerous and varied approaches used to establish eco-labelling schemes have the potential to create trade tensions. Additionally, the credibility, transparency and access of eco-labelling schemes have emerged as critical issues within the context of trade and environment. These issues are currently being reviewed in the international trade arena of the World Trade Organisation (WTO); negotiations on Multilateral Environmental

[3] UNDP, Sustainable Energy and Environment Division. Trade and the Environment: capacity building for sustainable development.

Agreements (MEAs); International Standard setting bodies; and at various bilateral and unilateral trade negotiations meetings.

The eco-labelling and international trade debate and its impact on trade policies, market access and standard setting policies of relevance to developing countries can only be fully appreciated by first examining the origins of the debate and reviewing the current status of the issue of eco-labels and their effect on trade.

Trade and Environment Interactions: The Early Days

Considerable attention is currently being focused on trade and environment interactions and their impact on established and emerging trade regulations. The trade and environment discussion has been on-going for many years. What is new, is the proliferation of eco-labelling and certification schemes and the potential for countries to use these as barriers to trade. Concern over the impact of trade and environment interactions was expressed since 1970's. A review of some of the significant trade and environment events occurring over the years is given in Box 1.[4]

The World Trade Organisation

There are currently no agreements within the World Trade Organisation (WTO) specifically dealing with the environment. There are, however, 'Green Measures' contained in a number of WTO Agreements which make provisions addressing eco-labelling and other environmental issues. Relevant agreements are summarised in Table 1.

The Doha Declaration

During the fourth Ministerial Conference in Doha, Qatar in November 2001 it was agreed to commence new rounds of negotiations on specific aspects of trade and environment interactions. There was reaffirmation of the commitment to the principles and objectives set out in the Marrakesh Agreement which established the WTO. Ministers also pledged a commitment to reject the use of trade protectionist policies. Recognising the fact that the majority of WTO Members are developing countries it was noted that it was essential to place their needs and interests at the center of work programmes adopted in the Declaration. It was further recognised that enhanced market access, equitable rules, technical assistance and capacity building programmes must be an integral part of the work programme if the needs of developing countries are to be served.[5]

[4] WTO Document. Early years: emerging environment debate in GATT/WTO.
[5] WTO Document WT/MIN(01)/DEC/1. 20 November 2001.

Table 1. WTO Agreements that make provisions to address environmental issues

AGREEMENT	PROVISION
Technical Barrier to Trade (TBT)	Addresses product and industrial standards
Sanitary and Phyto-Sanitary and safety (SPS)	National measures to protect animal and plant health
Subsidies and Countervailing Measures	Allows for subsidies up to 20% of the cost to adapt existing facilities to new environmental legislation
Trade-Related Aspects of Intellectual Property Rights (TRIPs)	Provides countries with the right to refuse to issue patents on products or processes that risk damage to human, animal and plant health and the environment
GATT Article 20	Under special conditions goods that protect human, animal and plant life and health are exempt from normal GATT disciplines
General Agreement on Trade in Services (GATS)	Article 14 - Under special conditions trade in services affecting human, animal and plant life and health are exempt from normal GATS disciplines

With reference to trade and environment, Ministers agreed to negotiate on: (i) the relationship between WTO rules and trade obligations under the MEAs including information exchange, and (ii) the reduction or appropriate elimination of tariff and non-tariff barriers to trade in environmental goods and services. In addition, the Committee on Trade and Environment was charged to pay special attention to:

- the impact of environmental measures on market access especially on exports from developing and least-developed countries;
- provisions within the TRIPs Agreement; and
- eco-labelling.

International Eco-labelling and Certification Schemes

Eco-labelling and certification programmes are designed to provide environmental information to the public about the environmental impacts associated with the production or utilisation of a particular product. In addition, eco-labelling programmes are used within various industries as competitive marketing tools. Eco-labels are normally voluntary although some countries

have mandatory eco-labels, for example, the US mandatory battery labelling and energy guide labels.[6]

Three categories of eco-labelling standards have been identified by the International Standards Organisation. Type 1 labels are voluntary multi-criteria labels that provide the public with information regarding the overall preference of a product over others within a similar product category. The label is in the form of a registered logo awarded by an independent entity to those within the industry that meet criteria set out by the entity.[7] Type 1 labels, also referred to as eco-seals, are based on the assessment of environmental impacts throughout the life cycle of the product, namely production, distribution, consumption and disposal. These life cycle analyses (LCA) are based on multiple criteria that can be biased since they often do not take into account conditions within the exporting country. As a consequence Type 1 labels based on LCA have been subject to much concern among developing countries and are the topic of increasing debate in the international trading arena, especially because they can be used as disguised barriers to trade.

By contrast Type II labels are self-declaration environmental claims made by importers, manufacturers and others within the industry who stand to benefit from making the claim. These labels are not verified by an independent third party neither do they state the environmental impact through the life cycle of the product. Type II label claims do not therefore provide the level of confidence, transparency or information required by discerning consumers. To deal with the potential threat of the loss of consumer confidence as a result of the proliferation of fraudulent eco-labelling claims, some countries have used legal mechanisms to ensure the credibility of Type II eco-label claims. This usually takes the form of fair trading legislation that address matters of misleading and fraudulent claims in trading practices.

Type III labels provide comprehensive environmental information on a product throughout its life cycle. The information provided on the product is verified, although no information is provided on the product relative to similar products available on the market.

Eco-labelling and Trade Interactions

It is interesting to note that the early trade and environment debates centered around *trade* practices and their possible negative impact on the environment. The issue at the time concerned the manufacture of goods, and trade in goods and services, that were being conducted in a manner not conducive to preserving the environment for future generations. Today, however, the

[6] WTO Document WT/CTE/W/150. 29 June 2000.

[7] Tom Rotherham. 1999. Selling Sustainable Development: environmental labeling and certification programs. The Dante B. Fascell North-South Center, University of Miami.

concern expressed by stakeholders, especially developing countries, is that environmental protection measures in the form of eco-labels and certification programmes are being used as technical barriers to disrupt trade and restrict market access into developed countries.

Currently there are numerous eco-labelling schemes in existence. In addition to the Blue Angel (Germany) and Canada's Environmental Choice mentioned earlier, there exist others such as the Nordic Swan (Denmark, Iceland, and Finland), Green Seal (US) and Eco-Mark (India).[8] The current global trend appears to be to award eco-labels based on multiple criteria that include life cycle analysis of the product. Analyses of product and production methods (PPMs) are based on the environmental consequences of the product's manufacture, utilisation and disposal.

The use of LCA or PPMs as criteria for awarding eco-labels is fueling the international debate on environmental technical barriers to trade. Developing countries are concerned that eco-labelling schemes currently in place may be in conflict with WTO rules, especially under the TBT Agreement which demands that countries should not discriminate between products based on the consequences of their production methods.

For eco-labels to be effective they must not only promote environmental stewardship within various industries, but they must act to facilitate trade by ensuring market access and limit technical barriers to trade. While this is an ideal situation to achieve globally, the reality is that some eco-labelling programmes are used as protectionist trade policies hiding behind the legitimacy of environmentally friendly production.

Over eighty five percent (85%) of international trade consists of products that can *potentially* be affected by environmental trade barriers.[9] Such environmental protection occurs mostly in respect of food items, plants, bulbs and cut flowers. It is estimated that 90% of products in this category are adversely affected by environmental trade barriers. This accounts for about 13% of world trade.

Countries such as Colombia which have had access to international markets limited by stringent eco-labelling criteria are of the view that eco-protectionist trade policies are made with the sole objective of forcing environmental policy goals of the importing country on companies in exporting countries. Some foreign exporters, mostly from developing countries, are faced with the problem of high costs required both to obtain information on foreign labelling programmes and to implement required technologies with the aim of being compliant with labelling criteria. Private eco-labelling programmes often come under criticism for setting environmental policies within the economic,

[8] WTO Document. WT/CTE/W/150. 29 June 2000.

[9] International Trade Forum article: Environmental Trade Barriers: who wins, who loses, what's the score?

environmental and cultural context of the home country, while ignoring policy input and conditions within other countries. It is often the case that the criteria established by these labelling programmes have no relevance to exporters in foreign countries.

The WTO rules do not explicitly cover eco-labels. The CTE has however been mandated to examine interactions between trade and environment including eco-labels and trade effects. International debate on the trade effects of eco-labels is currently centered round product-related and non-product-related criteria used to award eco-labels. The effectiveness of using WTO trade rules, or rules under the MEAs framework, to address and clarify trade and environment disputes arising from the use of process and production methods criteria to award eco-labels is unclear.

The Committees on Trade and Environment and on Technical Barriers to Trade have been striving to bring some clarity to the debate. The CTE has identified trade-related eco-labelling problems to include the following:

- most labels are granted on the basis of production methods;
- eco-labelling criteria are based on national conditions and often conditions within the exporting country are not taken into account;
- there is a loss of transparency and consumer confidence due to the proliferation in the number of available eco-labels.

Examination of relevant WTO rules as set out in the TBT Agreement and the GATT; shows that non-product–related criteria used in establishing eco-labelling programmes are not explicitly regulated. Only those parts of eco-labelling schemes determining product and product-related criteria appear to be covered under WTO rules and as a consequence these rules may be applicable in instances of relevant trade disputes.

It can be argued that the trade effects of non-product-related production and processing methods may be addressed by mutual recognition of national labels at the international level. With the loss of transparency and consumer confidence, there is a need for the harmonization of labelling criteria at the international level. Harmonisation of criteria can be achieved by internationally recognised bodies such as the ISO. There are however inherent problems associated with mutual recognition at the regional level. Such recognition is more easily achieved when the countries involved are at similar levels with regards to their environmental conditions and priorities, for example, mutual recognition of eco-labelling programmes between Canada's Environmental Choice and the US Green Seal programmes.[10] The effectiveness of this approach is however limited when dealing with countries with different environmental conditions and priorities as exists between developed and

[10] UNCTAD Document. Integrating trade, environment and development: recent progress and outstanding issues. TD/B/COM.1/3. 12 December 1996.

developing countries. Some countries have suggested the use of the strategy of equivalency between eco-labelling criteria to promote compatibility of trade and environmental interests.

Eco-labels and Market Access: The Case of Colombia's Cut Flowers

Colombia's case is one in which cut flower exporters have complained in international fora that environmental measures adopted by Germany have negatively impacted on the market access of their cut flowers into the German market.[11] Colombian exporters view the emergence and operation of several private eco-labels in Germany as being inconsistent with WTO rules on transparency and non-discrimination.

The main trade considerations in this case is the objection by Colombia's cut flower exporters to a system of certification proposed by the German Importers Association. The grounds of the objection are that the proposed programme is costly, the approach taken was coercive and the programme was discriminatory. The proposed programme was intended to apply only to the exporting cut flowers into Germany from Colombia and Ecuador. The government of Colombia objected to the proposed scheme because verification of the eco-labelling programme would have been conducted by foreign experts.

Colombia is concerned that private eco-labels can affect trade flows by creating a situation of demand for flowers displaying national eco-labels. Such labels have the tendency to be non-transparent and could easily mislead consumers.

The main recommendations of the Colombia case study within the context of eco-labelling are as follows:

- WTO members should observe the principles of the Code of Good Practices;
- Article 4 of the Agreement on TBT should be applied;
- The WTO should analyse and make recommendations on areas of mutual recognition and equivalence with respect to eco-labelling.

WTO Members Express their Views

Countries making submissions to the CTE are in agreement that eco-labelling programmes must be developed and implemented in a manner consistent with WTO trade rules especially those rules of non-discrimination and national treatment. The view of most developed countries is that the Code of Good Practices of the TBT Agreement should be applied to eco-labelling programmes. Members are still divided on the issue of non-product-

[11] WTO Document. Environmental labels and market access: case study on the Colombian flower-growing industry. WT/CTE/W/76 (G/TBT/W/60). 9 march 1998.

related PPMs. Some members, for example, Canada and the US, support the view that WTO rules as applied under the TBT Agreement are adequate to cover non-product-related PPMs. By contrast, other countries, mostly developing countries (such the ASEAN Group), consider that the GATT-WTO Agreements do not make provision to cover non-product PPMs. The CTE has, however, decided that the TBT Agreement provides adequate flexibility to cover non-product PPMs.

Certain countries are of the view that if eco-labelling criteria are mutually recognised and agreed upon by several countries, and if the WTO acknowledges these mutually recognised standards, there would be no need to take trade related disputes before the WTO. Such mutually beneficial arrangements were advocated by Colombia and are promoted as a win-win situation that would also benefit developing countries.

Several Members are supportive of the development of guidelines for eco-labelling schemes on the basis of mutual recognition of national standards and equivalency. Developing countries have also expressed concern about suggestions for a WTO Eco-labelling Agreement which they believe would establish a precedent for considering non-product PPMs as legitimate means of discriminating between products.

Other Labelling Issues: Labelling Genetically Modified Foods

Calls for mandatory labelling for genetically modified (GM) foods are also proving to be a contentious trade issue. As with other eco-labelling schemes there are divergent views as to the criteria to be used to develop GM labelling standards. The international debate is polarized. On the one side are countries like the US, Canada and Argentina which have adopted voluntary labelling standards for GM or GM-free products. On the other side are the EU and some other countries that have adopted or plan to adopt mandatory GM-labelling schemes.

The international trade debate on the labelling of GM foods is as yet still focused among developed countries, especially the EU and the US. Developing countries have not yet extensively expressed their views within the multilateral trading fora. In brief, the contentious issues are: (i) segregation of products of biotechnology may prove to be a costly exercise that will eventually be reflected in the price offered to the consumer; (ii) there are no globally accepted standards for accessing safety of products; (iii) imports of GM products are not efficiently or effectively regulated; (iv) a variety of different GM-labelling standards and approval procedures exists, all of which can lead to trade conflict.

There are currently several international organizations that are involved at some level in trying to regulate trade in GM products and to ascertain the impact of GM labelling on trade flows especially with reference to developing

countries. These organizations are: the Codex Alimentarius, the Food and Agricultural Organisation, the International Plant Protection Convention, the International Epizootics Organisation, World Health Organisation, the World Trade Organisation, the Organisation of Economic Cooperation and Development.[12] The Biosafety Protocol and regional initiatives also seek to address these issues. Collectively these organizations provide information on such matters as health and safety standards, labelling criteria, trade rules and dispute settlement. Despite what may appear to be a concerted international effort to address GM issues, there still remains a lack of consensus on how to achieve international regulation of trade in GM products and harmonization of labelling criteria.

Similar to discussions occurring in the overall eco-labelling debate, there have been calls for the use of mutual recognition initiatives to help resolve some of the trade conflict ensuing from GM labelling and trade conflicts. Mutual recognition initiatives such as the Trans-Atlantic Economic Partnership between the EU and the US already exist. It is envisaged that the use of similar initiatives in the form of regional agreements, memoranda of understanding and formal dialogues can avoid GM labelling and regulation being used as technical barriers to trade.

In July 2002 the European parliament voted in favour of the European Commission's proposal on new regulations for the traceability and labelling of GM foods and feed products. The proposal calls for tracing of all GM food and feed products throughout all stages of the production and marketing cycle. This provision would allow for the use of non-product PPMs criteria to be used in developing GM-labelling schemes.

The proposed EU labelling and traceability regulation has not yet been enacted. It is finding great opposition within Europe and North America and appears to have sparked the beginning of another trans-Atlantic trade dispute. The proposed EU regulation reflects responsiveness to consumer concerns regarding food safety, environmental impact and GM foods. In a response to the US threats to take the EU before the WTO trade dispute body over its GM policy, the Trade Commissioner of the EU reiterated that their GM policy is a mechanism to rebuild consumer confidence in food products.

Discussions on the proposed EU labelling and traceability regulations have already taken place within the WTO Committees on TBT and the Committee on SPS Measures. Both Canada and the US have complained to the WTO regarding the EU's proposed labeling and traceability regulation on the grounds that labelling GM products may violate WTO rules.

[12] Peter W. B. Phillips. 2003. Policy, National regulation and international standards for GM foods. IFPRI Brief 1, January 2003.

Concluding Remarks

The proliferation of labeling schemes onto the global market place has significant implications for developing countries. Eco-labelling schemes and policy directives have the potential to be used as technical barriers to trade therefore developing countries must be concerned with the market access of their exports into developed countries. To overcome such technicalities producers in developing countries will need to be innovative in the strategic positioning of their products in international markets. It will be imperative to form suitable alliances with importers in developed countries. Such alliances may be based on equitable contractual arrangements and mutual recognition of production and processing methods. It is also critical that developing country producers be aware of the nature of international debates occurring within the context of trade and environment and lobby at the governmental level to have their concerns addressed at these international fora. Greater emphasis must be placed on taking part in international dialogue, meetings and negotiations regarding the establishment of international eco-labelling standards.