Standards and Labelling

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While the management of international trade is governed by the policies and rules negotiated by governments, the practice of international trade consists of hundreds of thousand of daily interactions between individual companies and their customers. In order to be able to sell a product or service a company must first access the market in which the consumer is based. There are two main types of market access requirements: technical regulations, which are mandatory requirements developed and implemented by governments; and standards, which are voluntary requirements most often developed and implemented by private bodies. Standards and technical regulations are collectively referred to as non-tariff barriers to trade (NTBs).

As tariff levels have been lowered with the successful implementation of binding tariff schedules in the World Trade Organization (WTO), non-tariff barriers to trade have become relatively more important. Given their lack of technical and institutional capacity to deal with NTBs, developing countries in particular are concerned that an increasing number of standards and technical regulations will restrict their exports in the same way that high tariff walls or low quotas used to. While the main focus is often member countries of the Organisation for Economic Co-operation and Development (OECD), standards and technical regulations also reduce trade between developing countries.

The increased fear of protectionism through standards and technical regulations comes at a time when governments are increasingly looking to market-based approaches to address the challenges of sustainable development. The 2002 World Summit on Sustainable Development (WSSD) Plan of Implementation characterizes this shift away from command and control and towards market-based policies. The confluence of these two trends has led developing countries to show particular concern to the potential impact of an increase in standards and technical regulations that address issues such as environmental conservation, health and safety, and social issues—many of which may have an impact on market access for their exports.

At the same time, consumers and civil society groups are increasingly calling for actions to reduce or mitigate the impacts of economic growth and trade liberalization—often leading to policies that enhance the importance of environmental and social standards. In some instances, this pressure has led to the integration of environmental standards in government policies. An example is the recent German legislation that requires all Federal Government Agencies to buy timber from sustainably managed forests. While the
legislation does not ban imports of unsustainable timber products, it does greatly increase the market for sustainably produced timber and increases pressure on exporters to implement voluntary standards.

While the majority of sanitary and phytosanitary (SPS) measures to protect human, plant and animal health and safety are developed and imposed by governments, this is not the case for environmental and social issues. In these cases, the pressure on companies to adopt environmental and social standards is coming primarily from market forces, including from other private companies. In response to consumer demand, pressure from civil society groups and, increasingly, interest from the financial sector, major companies in OECD countries are implementing “sustainable” corporate procurement policies. The corporate social responsibility (CSR) agenda is also an important contributor to this trend. Particularly in industries where market concentration and consumer awareness of impacts is high, these policies are forcing environmental and social standards through supply chains.

Social and environmental supply requirements are already a fact of life in OECD-based industries, such as forestry and textiles, a trend led by the highly concentrated retail sector. Coffee retailers—representing almost 50 per cent of the total market—have recently committed to develop and implement a common baseline environmental and social standard for their suppliers. Leading members of the information and telecommunications sector in OECD countries have also developed a sector-wide environmental and social standard for their supply chain. Why, then, is so much attention being given to issues such as eco-labels and environmental standards in the WTO—a body that regulates the actions of governments and not those of private companies?

From past experience, we understand that standards can evolve rapidly from tools for product differentiation, to market segmentation, to baseline requirements, to instruments of public policy, and, eventually, even to technical regulations.

Figure 1. Evolution of market requirements.
One reason for this is that consumers are also voters. The public pressure that led companies like B&Q (United Kingdom), IKEA (Sweden), Home Depot (United States) and other major buyers of timber products to impose sustainable forest management standards on their supply chain also has an influence on the German Government. Also, once a standard exists, is deemed effective, and is implemented by a significant proportion of companies in a sector or region, it is relatively straightforward and politically easy for a government to integrate it into public policy—which may then have an impact on exporters in other jurisdictions.

Interests and Fault Lines

For a long time, the debate amongst WTO Members with most important repercussions for the use of environmental and social standards in trade policy was over the issue of process and production methods (PPMs), and non-product related PPMs in particular. Some Members argued that the concept of “like product,” which is a cornerstone of the international trade rules, precluded the differentiation of products based on anything other than the physical characteristics of a product itself, and not based on how it was made. In effect, this would have made it illegal for trade measures to address the full lifecycle of a product, and so limit them to addressing consumption effects, not production effects. This position was supported by the unadopted dispute panel reports in the 1991 U.S.-Mexico and the 1994 U.S.-EC Tuna-Dolphin cases.

However, the concept of “like product” has evolved with the recent rulings of the WTO Appellate Body. In the 2001 Shrimp-Turtle case, the Appellate Body ruled that WTO Members can use the exceptions provisions in Article XX to justify the “[imposition of] conditions on imports’ PPMs to accomplish environmental objectives both outside their jurisdiction and in the global commons,” as long as they are applied in ways that do not

Eco-labels from a Southern perspective

By Veena Jha

Eco-labelling is a fact of the international market place. However, environmentalists would have us believe that they are a dominant factor in the marketplace. Market surveys indicate a small but growing importance of this mechanism. Their effects are more evident in the purchasing practices of bulk buyers rather than of individual consumers. The challenge is how to accommodate eco-labelling programs in the Technical Barriers to Trade (TBT) Agreement, without compromising the basic rules of the World Trade Organization (WTO).

The situation is complicated by the lack of an agreed interpretation on whether private, voluntary eco-labelling schemes are within the scope of the TBT Agreement. Existing WTO jurisprudence, as well as market reality, appears to indicate that eco-labelling already exists in the market place and is widely used as an instrument to inform consumers about a product. So, there are no restrictions to the use of eco-labelling as a market based voluntary instrument.

Discussions in the WTO have focused on multi-criteria eco-labelling schemes, especially those that are based on non-product related process and production methods (PPMs). The effects of eco-labelling on the market place and international trade, particularly on imports from developing countries have been limited. It would appear that the interest in eco-labelling in the context of international trade is, at least in part, attributable to the fact that, from a conceptual and trade policy point of view, it involves many complex issues, such as PPMs, the definition of international standards, and technical equivalence. So far, little progress has been made in dealing with the PPM issue in the context of eco-labelling, particularly in the context of “equivalency.”
While there may be some advantages to developing countries of clarifying the status of eco-labelling with respect to WTO rules, there may also be some disadvantages. Clarification of the status of eco-labelling may result in greater WTO discipline in certain sectors (e.g., forest products, textiles, cut flowers), where exports from certain developing countries have been adversely affected by such schemes. It may provide an opportunity to force greater WTO discipline for purely private programs and NGO campaigns in areas where trade has been adversely affected. It may reduce pressure for unilateral measures.

Equally, there is a risk of establishing precedents with respect to PPMs, particularly if such precedents were to apply to labour, animal and human rights issues. This is particularly so because the new generation of eco-labels often encompass diverse issues such as labour rights, animal rights, and corporate social responsibility. There is also a risk that clarifying the status of eco-labels with respect to WTO rules would encourage the wider use of eco-labelling in international trade, and often mesh protectionist intent. It may also become more difficult to challenge an eco-labelling measure in the multilateral trading system.

Even if the disadvantages were not at all significant, developing countries have little direct benefits from eco-labels. They do not use eco-labelling to any significant extent in their domestic markets. To the extent that it is demanded through the supply chain, assistance has generally been forthcoming from firms for obtaining these labels. Very few, if any, examples can be found where eco-labels have obtained price premiums, market shares or improved environmental performance. In short, eco-labels may have potentially adverse or at best neutral trade effects for developing countries.

The dichotomy between developed and developing country interests on this issue was never more evident than in the context of the discussions on environmental goods and services (EGS). Instead of agreeing on the definition of EGS or some appropriate criteria, the approach of developed countries was to come up with an illustrative list of EGS for use in the negotiations mandated in the Doha Declaration. In fact, the concept of inherently environmentally friendly products such as organic products, jute and coir products was raised, but this discussion was not conclusive. This showed that EGS was more a marketing than an environmental instrument. The same applies to eco-labelling, where many countries have adopted their own standards.

What is worse is that environmental standards may actually result in the cartelization of a number of industries and sectors. For example, an environmental directive in several developed importing countries, led to the shrinking of fisheries exporters in India from nearly 400 to merely 100. This was because a number of small-scale fishermen could not comply with the standard and were forced out of business. In this case, the environmental standard actually had an impoverishing effect.

Another matter of concern is that as comparative advantage in several areas of production is shifting to developing countries from developed countries, complex trade restrictive environmental standards are kicking in. For example, in the textile and clothing sector, which is the mainstay of a number of developing countries, an elaborate and complex trade restrictive TBT and sanitary and phytosanitary (SPS) non-tariff barrier, a new system called REACH (Registration, Evaluation and Authorization of Chemicals) has been adopted in the European Union. A report from the U.S. Department of Commerce noted that, if adopted, some 30,000 chemical substances will be subject to this legislation and that the U.S. textile industry is likely to be widely affected, as technical requirements and testing procedures will be complex, time consuming and costly. The extent of the impact on developing country industries could be much more severe.

To conclude, environmental considerations, while legitimate objectives, have the potential to create trade distortions. These distortions can have damaging effects on developing countries and can even exacerbate poverty. In addition, developing countries have to trade-off multiple social, development and continued on page 183
discriminate between WTO Members. This opened the door to the integration of non-product related PPMs into the trading system. The Appellate Body report in the EU Asbestos case also found that non-product related PPM-based measures could be justified under both Articles XX and III. Several independent experts on trade law have also suggested that there is nothing in the WTO agreements to support the view that non-product related PPM-based trade measures could possibly be justified under international trade rules. While there are lingering ripples of dissent—in particular among many developing countries—it is now increasingly held that the use of non-product related PPM-based trade measures could possibly be justified under international trade rules.

Although there are some concerns that the provisions dealing with standards are not robust enough, most WTO Members agree that voluntary standards and eco-labels are legitimate policy tools. However, even if this were not the case, the finding would have only indirect repercussions for environmental or social standards because, for the most part, the bodies that develop and impose standards fall outside of the jurisdiction of the WTO.

Standards are addressed in two WTO agreements: the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which covers standards and technical regulations related to human, plant and animal health, including food safety; and the Agreement on Technical Barriers to Trade (TBT Agreement), which covers the rest. All WTO agreements are negotiated between governments, and therefore define only the rights and obligations of government bodies. While many of the standards covered under the SPS Agreement are developed by governmental bodies, most other standards are developed and implemented by non-governmental bodies. There is no effective mechanism in the TBT Agreement to directly impose requirements on these private standards bodies. There is only an indirect mechanism by which governments are encouraged to take reasonable measures to ensure that standards bodies operating within their jurisdictions comply with the Annex 3 Code of Good Practice for the Preparation, Adoption and Application of Standards. Nevertheless, WTO rules set the framework in which private companies operate.

Discussions on environmental standards (including eco-labelling) have taken place within the WTO Committee on Trade and Environment (CTE) since its inception in 1994. Since then, the CTE has covered the same issues that have cropped up again and again—particularly “like” products; process and production methods; international standards; and technical assistance. However, it was not until the 2001 Doha Round—which gave the CTE a mandate to address “labelling for environmental purposes”—did a WTO body have both a formal mandate to discuss environmental standards and a strict reporting deadline. Despite initial efforts, notably by Canada and the EU, to keep the issue on the table, discussions have made virtually no headway and the WTO negotiations are unlikely to lead to any major advances.

Although the CTE acts as a convener for discussions on eco-labelling it does not have any formal authority for rule-setting in the area.
The TBT Committee is the only body with formal negotiating authority over the TBT Agreement. While Members of the TBT Committee could, in theory, grant negotiating authority to the CTE, they are unlikely to do this because most are not convinced that there is a difference between environmental standards and other types of standards, and therefore question the need for different rules and treatment. Also, there is no distinction in the WTO rules between standards and labels: voluntary labelling measures are treated as standards; mandatory labelling measures are treated as technical regulations. Until a legal distinction is made between standards in general and labelling in particular, anything that the CTE might recommend on eco-labelling would also risk affecting all environmental standards and technical regulations.

Finally, any shift towards acceptance of non-product related PPM-based standards would almost certainly be seen by developing countries as increasing the likelihood that labour standards could become linked with trade measures—something that is met with strong opposition from many quarters, and from developing countries in particular.

In general, while the TBT and SPS Committees may be useful fora in which WTO Members can discuss and set policy objectives (for example, on technical equivalence, special and differential treatment, transparency, etc.) the capacity to deliver on these policy objectives arguably lies outside the realm of trade ministries. In order to further work in this area, the United Nations Conference on Trade and Development (UNCTAD) has established a Standing Committee on Environmental Requirements and Market Access—which can be an alternate forum for addressing issues in a more effective multi-stakeholder context.

**Capacity as a Barrier**

Even if the legal and policy issues surrounding environmental standards were resolved tomorrow, exporters in developing countries would still have to struggle to identify what standards are required for which market, to access and pay for the technology needed to comply with standards, to demonstrate compliance with them, and to stay continually vigilant for changes to the requirements. It is becoming increasingly evident that the real technical barrier to trade is the lack of institutional and technical capacity to deal with standards. This is particularly acute in developing countries, but also an important issue for most small and medium-sized enterprises (SMEs).

Insufficient technical capacity in three basic aspects makes it difficult for companies to benefit from the TBT and SPS Agreements: rule-making (standards and technical regulations); **conformity assessment**; and accreditation. Indeed, OECD and UNCTAD case studies which have looked at the barriers imposed by environmental standards, have consistently highlighted the capacity problems that exist in each of these three aspects. So, as the reality of environmental and social standards is increasingly recognized, attention is turning away from discussions on legal issues towards the basic technical and institutional capacity needed to deal with them. This is appropriate because capacity is needed whether or not the requirements are being driven by governments or through supply chains.

Although the TBT and SPS Agreements impose binding obligations on Members to provide technical assistance to help other Members develop their standards bodies, metrology and testing labs, conformity assessment bodies and accreditation agencies, there is very little that can be achieved through the WTO. The promises of technical assistance made in the TBT and SPS Agreements were made by trade ministries that do not have the financial means to fulfill them. Any significant increase in technical assistance for the TBT-related institutions can only come from development ministries, who have limited budgets and their own
processes for assessing development priorities. The main problem caused by environmental standards and regulations—as with any standard or regulation—arises not due to legal deficiencies in the TBT or SPS Agreements, but rather due to deficiencies in the capacity of countries to deal with them. And this is not something that can be fixed inside the WTO.

Consider, for example, Article 2.4 of the TBT Agreement, which strongly encourages Members to base their national standards and technical regulations on existing international standards, and Article 2.6, which encourages Members to participate in the development of international standards. Most international standards are developed within a select group of formal international standards bodies (ISBs). The most important of these traditional ISBs have specific jurisdictions; thus, the International Telecommunications Union (ITU) is the recognized forum for the development of international standards for telecommunications and the Codex Alimentarius Commission of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) is the forum for the development of international food safety standards.

The problem is that there is no such body with presumed jurisdiction over environmental standards. Indeed, there are very few international environmental standards: most are developed at the national level. Those that are developed for international application are largely developed by non-governmental organizations working outside the formal networks of national standards bodies. The Global Eco-labelling Network (GEN) and the International Social and Environmental Accreditation and Labelling Alliance (ISEAL Alliance) are attempting to fulfill this role, but at the moment lack the institutional strength or national networks to be able to undertake the roles of traditional ISBs, such as the ITU, the International Organization for Standardization (ISO), or the

Confronting eco-labelling myths

**By Nicola Borregaard and Annie Dufey**

The last decade witnessed a growing interest in the market for sustainable products in developing countries. For example, in a recent survey by the Inter-American Development Bank (IDB) of trade and environment activities of Latin American countries the development of strategies towards the production and consumption of sustainable products was identified as one of the seven priority areas in which Latin American environmental authorities should and would like to be more active. Amongst the existing initiatives, the survey identified various programs related to bio-trade, including Colombia’s Green Markets Program; Uruguay’s Law 17.283 on Natural Uruguay; Chile’s Public-Private Working Group on Environmental Goods and Services; and numerous other initiatives at the sub-sectoral level, especially in the forestry, tourism and agricultural sectors.

A variety of initiatives are also underway at the international level to assist developing countries to develop these markets and to facilitate and harmonize certification. Examples include: the Asia Pacific Economic Cooperation (APEC) Voluntary Initiatives for Sustainable Production; the International Social and Environmental Accreditation and Labelling Alliance’s (ISEAL) Code of Conduct for Setting Social and Environmental Standards; and the International Task Force on Harmonization and Equivalence in Organic Agriculture.

Despite this activity—and the trends they signify—certain myths about eco-labelling

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and sustainable products persist. The assumptions that underpin these myths are prevalent in important economic and political sectors in developing countries and will need to be confronted before wide-scale headway can be made across the South in changing the status quo. At least three of these myths are of particular importance.

Myth #1: Sustainable product markets are niche markets. Clearly, what was conceivably correct at the beginning of the 1980s and, possibly, for most products even until the early 1990s, is not the case any longer. Sustainable products constitute one of the fastest growing markets. Organic products, for example, now have significantly gone beyond the one per cent market share threshold that might once have categorized them as niche markets. Indeed, approximately five per cent of world trade today is in so-called “green products.” The dynamism of markets for products from sustainable forest management, for example, raises expectations as to the increasing importance of markets for a diverse range of sustainable products.

Myth 2: Certification is a private sector business; there is no role for government. In developing countries, especially in those with more neo-liberal economic approaches, there is a common understanding that certification schemes are private sector operations—market responses to market needs by clients or consumers. Indeed, for some sustainable products, it has been the private sector, together with environmental or other non-governmental actors, that has elaborated and implemented certification schemes and criteria.

The most obvious example is the certification of sustainable forestry management. However, in a number of other cases, the role of government has been important. This has been so, for example, in the case of sustainable fisheries where the existence of a regulatory framework that prevents the respective species from being overexploited is one requirement, amongst others, for certification. In the case of organic agriculture, government has assumed a regulatory role as an overseer of the certification schemes or as the accreditation agency. Importantly, government has also tended to assume its role as an active promoter of sustainable products and an internalizer of environmental and social externalities.

Myth 3: Developing countries have a competitive advantage in the production of sustainable products. Against initial suppositions that developing countries would have a competitive advantage in the production of sustainable products, it is now widely understood that the production of sustainable products implies a variety of costs and expertises that go beyond the traditional equation of labour, land and capital and that have a significant influence on supply and demand and the final market outcome. This includes costs and expertises related to: the internalization of social and environmental externalities, certification, market information and intelligence, and the development of local markets.

Most developing countries are only beginning to take into account environmental and social externalities. Governments have tended towards reactive environmental management, mostly through regulatory instruments, a few preventive mechanisms and even fewer instruments directed at the identification and promotion of opportunities for sustainable products. In industrialized countries, on the other hand, support payments that compensate for positive externalities may be very significant; up to 20 per cent of production costs in some cases. Moreover, the internalization of negative externalities generated through the production of conventional products is also significantly more advanced in industrialized countries.

Sustainable product certification procedures are often complex and expensive. They require well-established, efficient and effective institutions of certification, standardization, metrology and accreditation, which developing countries often lack. They require an interdisciplinary approach which poses a challenge for traditional certification and accreditation institutions. On the other hand, the “one size fits all” approach of many international certification schemes often fails to consider the realities in developing countries.
International Electrotechnical Commission (IEC). While it would benefit all WTO Members if the development of environmental and social standards were undertaken in a stronger institutional framework, there is relatively little that the WTO itself can do on this.

**A False “Developing Country Syndrome”**

At the moment, almost any discussion about environmental and social standards that deals with developing countries adopts a defensive narrative—the implications are that developing countries have more to lose than to gain; that requirements are being imposed by rich countries; that, if they could, developing countries might prefer avoiding any environmental and social regulations at all. Reality, of course, is more nuanced.

First, it is clear that developing countries have their own environmental and social priorities, which are also addressed through standards and technical regulations applied at the domestic level. It is likely that the objection is not to the principle of higher standards, but rather the mechanism through which they are imposed and the fact that the requirements are not appropriate in, or consistent with the developing country context.

Second, environmental and social requirements are not going to stop North-South trade; but they may affect trade patterns. Those countries or regions that are able to develop the capacity to deal with these standards will almost certainly benefit at the expense of the laggards. There is, of course, nothing new in this type of competition.

Third, most environmental and social requirements do not address issues that are of interest to non-OECD countries. Most standards and technical regulations are presently developed by OECD-based interests in response to OECD-related concerns. As soon as developing countries learn to use standards and technical regulations for their own strategic purposes, there is no reason to doubt that they can also address developing country priorities and benefit developing country interests. For this to happen, developing countries must be empowered to become “standards-makers,” not just “standards-takers.” Of course, the best way to empower developing countries is to facilitate their active participation in standard setting processes and work towards accepting the standards that they set for themselves.

**Trends and Future Directions**

There are two trends that seem likely to influence the future of sustainable development standards and labelling. First is the recognition that some environmental and social issues are of financial significance to the success of a company. This reality is leading many large investors to pay closer attention to environmental and social practices—not only of the companies in which they invest, but also of the suppliers with whom these companies do business. Large companies have thousands of first-tier suppliers, and tens of thousands of second- and third-tier suppliers. Pressure on one company can therefore have a ripple effect on tens of thousands of companies.

The second trend is the integration of environmental and social issues into a single concept, often referred to as corporate social responsibility or CSR. The concept is already being mainstreamed: the ISO is currently developing an international standard on Social Responsibility. If the speed and direction of the evolution of standards into technical regulations is influenced by consumer preferences and by the nature of the standards that exist, then it is almost certain that the codes and standards that are being used to address corporate social responsibility issues today will evolve first into the kinds of instruments that can be integrated into trade policy, and then evolve further into technical regulations that address environmental and social issues. This could most likely lead to
clashes between those in favour of integrating sustainability issues, including labour standards, into trade policy and those opposed to them.

As pressure mounts on governments to integrate standards into public policies there will also be increased pressure to demonstrate that standards and labelling schemes are effective. At the moment, there are very few data available on the effectiveness of standards in general, or on the effectiveness of one standard over another. This will require the development of more refined methodologies for distinguishing between different types of standards and labels, and commonly accepted approaches for monitoring their environmental, social and trade impacts.

From the perspective of future discussions at the WTO, the main question will almost certainly be whether there is a need for additional rules to deal with social and environmental measures; or of public policy measures in general. Those in favour will have to explain why WTO Members have seen the logic in defining special rules to govern standards and technical regulations on human, plant and animal life and health (the SPS Agreement), but do not see the value in doing so for other public policy issues.