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Group on Environmental Measures and International Trade

AGENDA ITEM 3: PACKAGING AND LABELLING REQUIREMENTS

Note by the Secretariat

1. This note has been prepared in response to the Group's request at its meeting of 6-7 May 1993 that the Secretariat prepare a paper addressing, in a generic manner, trade effects and concerns that could arise from labelling requirements. This note draws on discussions that have taken place in the Group, submissions made by individual delegations on their national experience with labelling requirements, GATT document TRE/W/3, and material from other sources.

Labelling requirements

2. Environmental labelling requirements can generally be distinguished as three types: eco-labelling schemes which are designed to base the award of a label on a life-cycle analysis of a product; single-issue labelling which highlights a specific aspect of a product such as its bio-degradability; and negative labelling which indicates a product's dangers or hazardous properties. Although all three types may have trade effects, the third type differs from the first two in that it affects the entry into the market of the product, not the marketing appeal of products already on the market. As negative labelling usually addresses health or safety concerns, it is generally mandatory. In this regard, it can be viewed as a technical regulation as this term is defined in the Agreement on Technical Barriers to Trade.

3. The first and second types of labelling requirements are generally voluntary and serve to enhance the marketing appeal of a small percentage of goods already on the market by rewarding their environmentally-friendly characteristics. These programmes are generally designed to achieve four goals:

- improve the sales or image of a labelled product;
- raise the awareness of consumers;
- provide accurate and timely information for consumers to make informed judgements; and
- direct manufacturers to account for the environmental impact of their products.

4. While the second type of labelling requirements focuses on one aspect of the product, the first type, which is what is generally meant by eco-labelling, encompasses an overall assessment of the environmental impact of a product during its life-cycle, including its production

(including raw material use), distribution, consumption, and disposal. This type of eco-labelling will be the focus of this note. However, many of the trade effects which apply to this type of requirement might also apply to single-issue labelling.

Eco-labelling

5. When examining the trade effects of eco-labelling programmes, it must be remembered that the overriding aim of these programmes is to distinguish certain brands or makes of products as having significantly less adverse environmental impact than others in its product category. Eco-labelling can only be effective if accepted and used as a marketing tool to increase sales or improve the product's or company's image, which in turn relies on increased consumer awareness that some products are better or worse for the environment than others. In this regard, eco-labelling programmes purposefully differentiate products because only in this way can they identify the environmentally "best" products in a product category.

TRADE EFFECTS: Evidence indicates that, at present, there is little trade in environmentally-labelled goods as they affect a small share of goods already on the market. Also, the fact that present eco-labelling programmes are voluntary lessens the trade effect to an inability to obtain the label, not an inability to access the market. Thus, insofar as the label affects consumer behaviour, non-labelled products would be disadvantaged.

Nevertheless, as eco-labelling programmes become increasingly popular, trade effects not inherent to the environmental purpose of the programmes can arise, particularly for small foreign suppliers and those from developing countries. The impacts of eco-labelling on developing country exports currently do not appear to be significant as only very few products of export interest to them are covered. However, possibilities to introduce or extend eco-labelling programmes to products of export interest to developing countries, such as textiles, clothing and footwear, are under investigation¹.

Procedures of eco-labelling programmes

6. All eco-labelling schemes generally operate in a similar fashion and can be reduced to three general stages. The first is the selection of a product category usually by a committee composed of a wide range of representatives from, for example, government, the scientific, environmental, consumer, and religious communities, trade unions, and

¹"Green Consumerism, Eco-labelling and Trade", draft discussion paper prepared by Veena Jha for the United Nations Committee on Trade and Development, page 20, paragraph 34. For further information see also, Veena Jha, Rene Vossenaar and Simonetta Zarrilli, "Eco-labelling and International Trade, Preliminary Information from Seven Systems", Geneva, May 1993. Draft discussion paper prepared for the ISO/IEC SAGE subgroup on eco-labelling, Toronto, May 27-28, 1993. The authors work with the UNCTAD Secretariat. However the views reflected in this paper do not necessarily represent those of UNCTAD.

industry. This stage also involves analysis of the environmental impacts of the products in the category to determine the aspects on which to focus the criteria. The second stage is determining the criteria and threshold levels which the products will have to satisfy to obtain the label. This is usually done by another, more technically-oriented committee, which usually sends the draft criteria back to the first committee for review and final approval. The third stage involves investigation, licensing and supervision by the programme authorities.

7. Anyone may suggest a product category to the committee for evaluation of its feasibility as a category in which certain products can be differentiated in terms of environmental attributes.

TRADE EFFECT: Although eco-labelling programmes allow anyone to suggest a product category to be considered by the committee for selection, in reality, the majority of suggestions come from industry. Although generally not stated, it could be presumed that foreign firms are allowed to suggest categories as well. However, unless foreign firms have operations in the country of the eco-labelling programme, administrative, procedural, or financial difficulties may hinder or prevent their ability to propose product categories in which they have an interest, and thereby to gain any concomitant advantages.

8. Once the committee selects a product category as workable, the type and degree of environmental damage caused by the products in the category are assessed. Such an assessment is, in theory, performed over the life cycle of the product and should identify qualitatively the most important environmental impacts throughout the cycle.

TRADE EFFECT: If performed in a thorough manner, life-cycle analysis could have trade implications because foreign products may utilise different process and production methods (PPMs). Developing countries, in particular, may be at a disadvantage as they might use process and production methods that are judged environmentally unsound. PPMs that are or are not environmentally sound would likely be a matter of definition, the determination of which may be influenced by the methods that are used domestically². Likewise, such determination might also imply the imposition of domestic values and standards on exporting countries, which has been the subject of discussion in the Group under the issue of "extraterritoriality".

²Jha, Vossenaar and Zarrilli, page 12.

Life-cycle analysis can also affect countries which export primary products and raw materials. Again, developing countries are particularly vulnerable as they are often dependent on such types of products for the bulk of their exports. An eco-labelling programme, in which the assessment of a product category identifies a raw material input as the significant environmental aspect in the product's life-cycle, on which the criteria and threshold (see below) are to be based, can create potential trade effects for countries exporting this raw material.

9. However, assessing and valuing different types of environmental effects to determine a net environmental impact of a product throughout its entire life, and then comparing these across products, is very difficult and most countries have little experience in this area. Thus, in practice, in assessing the environmental impact of products within a category, rather than the entire life-cycle, only a few specific aspects are focused upon. These aspects then become the basis for the second stage, the development of criteria that the product must meet to obtain the label.

10. These criteria are generally the most important aspect of a labelling programme and are generally termed as a standard of performance or a threshold quantity (for example a numerical value for emissions, energy use, or product content). The number and type of criteria for each product category depends, to a large degree, on the variation among the products and where, when and how they impact the environment.

11. An important element is the threshold level of the criteria at which a product can receive the label. This is important because the labels should not only stimulate competition among manufacturers for the label but also stimulate public confidence. Generally high thresholds are achieved by only a small share of the market. Some programmes set an initial goal of what percentage of the market should initially be eligible for the label. The threshold can later be raised as a larger share of the market is able to obtain the label.

TRADE EFFECTS: Trade implications may arise from the type of criteria and the threshold levels selected for award of the label. In practice none of the present eco-labelling programmes use different criteria for products of different origins. However trade barriers may result from requirements that are too costly or difficult for foreign firms to meet. For example, some eco-labelling programmes are designed to keep the labelled and the non-labelled products at the same price; the increase in the market share of the labelled products would compensate for any cost increase that may have been incurred in obtaining the eco-label. For some countries, especially small suppliers, the costs of complying with the requirements may be more difficult to absorb, thereby adversely affecting the competitiveness of their exports³.

³Ibid, p.12.

It is questionable whether discrimination in such cases is beneficial to the environment; foreign firms may not necessarily be unwilling to produce more environmentally-friendly products, but merely be unable or lacking in the sufficient capital or technological know-how. More unfortunate, both from the environmental and trade perspective, are foreign suppliers that are not aware of a programme nor of the details of its criteria; in this case discrimination against the foreign product would not reflect environmental considerations at all, but a lack of transparency, or structural or administrative weaknesses in the trading system. In fact, the foreign product might be more environmentally-friendly than its domestically-produced, labelled substitute.

Criteria that are designed to favour domestic products or which require the use or input of only certain intermediate materials or processes in the manufacture of the product, particularly those for which domestic industry maintains intellectual property rights, would also create trade effects. One way to guard against such misuse of labelling programmes would be to involve those countries, with significant trade interest in the product category concerned, to participate in the process of setting criteria and threshold levels.

12. The third stage involves investigating a specific product submitted by a company for a label, possible licensing and supervision. The investigation usually involves testing the product and reviewing submitted documentation with the help of specialised testing organizations. In some programmes, submitted test results by a testing organization certified by the labelling authority will suffice.

13. When it has been decided that all requirements of the criteria have been met, a contract is made between the labelling authority and the company for a licence to use the eco-label. As the criteria must be updated regularly to reflect technological and market changes, the term of validity of this licence is restricted to a specified period, usually two to three years. In many programmes, licensees are required to submit regular attestations confirming their continued compliance with the criteria.

TRADE EFFECTS: This stage may also raise administrative trade barriers. In the investigation and supervision, some eco-labelling programmes require plant inspections which could prove difficult if the plant is in a foreign country. Problems may arise for foreign suppliers if they consider that confidential business information would have to be disclosed in order to gain access to the labelling programme. They may also have difficulty arranging for testing of their products which would be acceptable to the labelling authorities. The costs of such testing may also affect the competitive position in the market, particularly for small foreign suppliers, who might consider costs too high in relation to their total sales in that market.

In addition, eco-labelling programmes charge fees usually for the application, the annual contract, and, in some cases, label publicity. These vary according to the programme and are usually levied based on the unit price or annual sales of the labelled product. Nevertheless, they might also prove too burdensome for small foreign suppliers, as might the costs of continually submitting attestations confirming compliance.

Another issue concerns the use of a foreign label in a domestic market. Presumably, if a product was awarded a label according to credible criteria in its country of origin, it should be allowed to be exported and sold in a foreign market with the label. However, in reality, the label may not have any effect; consumers might not understand and respond to a foreign environmental label and may be confused by or ignore it, particularly if the same product was awarded an environmental label from a domestic authority. This may serve to the detriment of the environmental objectives of the programme. It may also create higher costs or other difficulties for foreign suppliers if they have to meet a variety of different labelling requirements in the different markets they supply.

Conclusion

14. The trade effects and concerns outlined above can usefully be reviewed and revised as further information is made available to the Secretariat by individual delegations on their national experience with labelling requirements.

15. Many of the trade effects outlined above are the result of possible administrative weaknesses in the international trading system. The most urgent response to this would be increased transparency of eco-labelling programmes, including the details of the product categories covered, their criteria and threshold levels. This could be most easily envisaged for those programmes sponsored by or actively involving the government. Discussions in the Group have identified labelling programmes, particularly those emanating from the private-sector or with no government involvement, as a potential gap in present GATT transparency provisions.

16. Another possible response would be greater accountability to the public, and the involvement of countries, with significant trade interest in the product categories concerned, to participate in the process of setting criteria and threshold levels.

17. Harmonisation of environmental labelling programmes may also provide a potential response to the trade effects identified and is a likely trend for the future. The International Organization for Standardization is currently working towards creating international, voluntary standards for environmental labelling terms and definitions, labelling symbols, testing and verifications methodologies, and advertising.

18. Harmonization could also be envisaged for product categories, the specific products, and the criteria. The certification and labelling could take place at the national level. However, such harmonised products and criteria, may have difficulty in taking into account differing national characteristics of the markets and of the environmental concerns, and could lead to an overall lowering of standards. It may also prove bureaucratically cumbersome.

19. Another approach to harmonization could be mutual recognition of labels, based on reciprocity. A country could automatically award labels to products which had qualified for labels in another country and vice-versa. One problem with this approach is that the criteria between the two countries must be very similar. The label should be awarded to products with higher than normal environmental attributes among similar products. Since this is a relative measure, the criteria would have to take into account the particular varying circumstances among the national markets, such as different requirements for the products, which may differ according to the environmental priorities of countries. Page 7, paragraph 29 of document TRE/W/3/Add.2 presents an example of a labelling programme based on this approach.