

**Trade as an Environmental Policy Tool?
Environment as a Trade Policy Tool?**

GEN, Ecolabelling and Trade

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1. Background

1.1 Context

A broad debate over issues related to environmental labelling (including "ecolabelling") and trade, with some particular attention paid to non-product-related (npr) process and production methods (PPMs), has been ongoing for at least eight years. The debate has engaged the Organization for Economic Cooperation and Development (OECD), the United Nations Committee for Trade and Development (UNCTAD), the United Nations Environment Program (UNEP) and, of course, the World Trade Organization (WTO). The Doha Declaration in 2001 put some focus on the discussions when Trade Ministers directed the WTO's Committee on Trade and the Environment (CTE) to undertake further work in defining the issues and making recommendations for moving forward.

Further, the August 2003 Johannesburg World Summit on Sustainable Development (WSSD) created a more positive policy environment from which environmental labelling may be considered. During the WSSD, a number of implementation plans were discussed, including one on the subject of changing unsustainable patterns of consumption and production, within which, "...effective, transparent, verifiable, non-misleading and non-discriminatory consumer information tools..." such as environmental performance leadership labels ("ecolabels"), were promoted. As well, there has been an apparent significant shift, since the WSSD, in international attitudes regarding such labelling away from the historical "trade issue/nuisance" view to one of "useful sustainable development tool", and that there is now an opportunity to advance environmental labelling internationally.

1.2 Types of Voluntary Environmental Product Labelling

While the environmental labelling and trade debate has been going on for some years, it is not clear whether the issues being raised apply equally across the broad range of types of environmental labelling, and especially with respect to voluntary labels. There are a number of ways to differentiate environmental labels:

- there are voluntary and mandatory labels;
- there are self declared and third party labels;
- there are environmental information labels – no product comparison or leadership identification - and environmental leadership labels;
- there are environmental rating labels;

- there are single issue and life cycle based labels;
- there are single sector and multiple sector labels.

The International Organization for Standardization (ISO) has attempted to codify environmental labelling. However, the ISO has only identified three types of voluntary labels:

- ❖ Type I – life cycle based, voluntary, multisectoral, environmental leadership, third party labelling schemes;
- ❖ Type II – self declared claims (either life cycle or single issue); and
- ❖ Type III – environmental performance declarations or reports (non-selective).

In reality, there is a very wide range of types of voluntary environmental labels in existence, with more potentially being developed. These include, but are in no way limited to, a range of organic labels, labels identifying Genetically Modified Organisms or Genetically Engineered Foods, environmental performance rating labels, resource management labels, labels of verified environmental claims, and of course the Type I, II and III labels identified by the ISO. The challenge is to understand the trade issues and concerns being debated and to ensure that these concerns, if valid, are appropriately targeted in light of the different types of labels that actually exist.

The Global Ecolabelling Network (GEN) is a network of twenty-five life cycle based, voluntary, multisectoral, third party, environmental leadership labelling schemes or Type I labelling programs. This paper was prepared to meet the three-fold purposes identified in the next Section, and primarily concentrates upon trade issues in the context of Type I ecolabels, and related strategies and initiatives. Some of the discussion may be relevant to other types of environmental labelling, but not necessarily.

1.3 Purpose

The three-fold purposes of this paper are to:

- (i) communicate to others the background and purpose of the GEN;
- (ii) help GEN members better understand the context of, and issues related to, the trade debate, and
- (iii) communicate to others what the GEN and its members have been collectively doing in those areas that are connected to the trade issues.

The remainder of this paper is structured around the three purposes above.

2. Ecolabelling and the Global Ecolabelling Network (GEN)

In 1994, the Global Ecolabelling Network (GEN) was launched to provide a forum for information exchange and cooperation between organizations operating ecolabelling programs. Ecolabelling, in the GEN context, is limited to programs or

schemes that are life cycle based, voluntary, third party, multisectoral and selective (defining environmental leadership) - in other words, that fit the ISO Type I definition. Table 2.1 below includes a summary list of ISO 14024 principles. Some twenty-five programs from all corners of the world are members of the GEN and new programs are being developed each year. Membership includes programs from both developed and developing countries, and interest in new programs comes largely from developing countries.

Table 2.1: ISO 14024 Guiding Principles

Clause 5.1	Voluntary nature
Clause 5.2	ISO 14020 Principles apply
Clause 5.3	Applicants comply with environmental and other relevant legislation
Clause 5.4	Criteria development includes comprehensive life cycle consideration approach
Clause 5.5	Environmental criteria differentiate environmentally preferable products from others
Clause 5.6	Criteria based on indicators arising from life cycle considerations Criteria set at attainable and measurable levels
Clause 5.7	Fitness for purpose and levels of performance [of products] taken into account in Developing criteria
Clause 5.8	Criteria are set with a predefined validity period Criteria and product function requirements are reviewed, and potentially revised, within a Predefined time period
Clause 5.9	Formal open participation process for selection and review of product categories, Environmental criteria and product function characteristics
Clause 5.10	All [product] environmental criteria and function characteristics are verifiable Compliance assessment incorporates generally acceptable standards and methods
Clause 5.11	Transparency exists through all stages of ecolabelling program development and Operation; information on significant program aspects is available for inspection and Comment by interested parties
Clause 5.12	Unnecessary obstacles to international trade don't exist
Clause 5.13	Application and participation is open to all potential applicants
Clause 5.14	Development and selection of criteria based on sound scientific and engineering principles
Clause 5.15	Program is free from undue influence
Clause 5.16	Any fees are kept as low as possible and applied equitably to all applicants and licensees
Clause 5.17	Confidentiality of pertinent information is maintained
Clause 5.18	Mutual recognition is deemed desirable

As part of a broader set of environmental policy options, the GEN type of ecolabelling has been designed as a market-based tool to encourage the demand for and supply of products and services which could be determined to have lower impact on the environment, over the product's life cycle. The typical product life cycle includes consideration of environmental impacts at the extraction of raw materials, transportation, manufacturing, use and disposal stages.

3. Context of the Trade Debate – the WTO and Ecolabelling

Several World Trade Organization (WTO) Agreements contain rules potentially applicable to ecolabels, including, the General Agreement on Tariffs and Trade 1994 (GATT 1994 or GATT), the General Agreement on Trade in Services (GATS), the Agreement on Technical Barriers to Trade (TBT), and the Agreement on Sanitary or Phytosanitary Measures (SPS). Each agreement contains its own set of rules, some of which overlap with rules in other agreements. Nonetheless, there remains a good deal of uncertainty (with significant variance in opinion and interpretations) about which agreements apply to ecolabels and under what circumstances.

3.1 GATT

The GATT 1994 contains the basic disciplines for regulating trade in goods between WTO Members. The GATT contains several obligations that could apply to ecolabels, including:

- the requirement that “any advantage, favour, privilege or immunity” granted to a product from any country be accorded to a “like product” originating in or destined for any member country; and
- the requirement that member states treat products imported from other member states no less favorably than “like” domestic products.

While the GATT rules out treatment that discriminates either between “like products” from different WTO trading partners, or between foreign and domestic “like products”, the situation is less clear when ecolabels differentiate between products on the basis of process or production methods (PPMs). Some PPMs will affect the characteristics of the finished product, in which case the analysis should be similarly straightforward. Frequently, however, PPMs do not affect final product characteristics. These so-called “non-product-related” (npr) PPM requirements are typically based upon life-cycle considerations, and may differentiate between products based partly upon environmental impacts associated with processes or production methods (for example, the amount of energy consumed in manufacturing the product). [As well, the label must not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination...or a disguised restriction on international trade...”]

However, there are different views on whether npr PPMs are a legitimate basis on which to distinguish products. Some, fearing that npr PPM requirements would place them at a disadvantage, oppose including npr PPMs as a basis for distinguishing between products.

If products with different npr PPMs are considered “like”, and if an ecolabelling program is determined to have given “less favourable” treatment to an imported product (over a domestic product), the GATT’s environmental exceptions could be applied. These include measures “necessary to protect human, animal or plant life or health” and measures “relating to the conservation of exhaustible natural resources.”

3.2 *TBT*

The Agreement on Technical Barriers to Trade (TBT) covers both technical regulations, with which compliance is mandatory, and standards, with which compliance is voluntary. Both regulations and standards “may also include or deal exclusively with ...labeling requirements as they apply to a product, process or production method.” Generally, in the context of the TBT, voluntary labels are considered standards. The principal rules for standards, including privately administered labels, are outlined in the TBT Agreement’s Code of Good Practice. The Code contains:

- Most Favoured Nation (MFN) and national treatment obligations;
- a requirement that standards not create unnecessary obstacles to trade;
- a requirement that standards should be based on international standards except when such standards would be inappropriate or ineffective;
- harmonization of international standards should be sought to the degree possible and within the limits of available resources; and
- provisions for notice and transparency. (For example, standardizing bodies must publish work programs every six months and provide opportunities for interested parties to submit comments during standards development.)

An important distinction concerning TBT Agreement applicability is whether the operating entity is a central government body or another type of standardizing body. The TBT Agreement can only be binding on WTO Members and therefore cannot directly reach private organizations. However, Members must “take such reasonable measures as may be available to them” to ensure that all bodies within their territories comply with the relevant provisions.

3.3 *GATS*

The General Agreement on Trade in Services (GATS) is relevant for labels relating to services. Services consist of a wide range of activities, including tourism, transport, or the provision of energy, many of which may affect the environment. Labels that provide information on these services, or on the environmental aspects of the service delivery, would fall under the GATS.

Like the GATT, the GATS contains principles of non-discrimination, market access, and transparency. However, the GATS differs from the GATT in that it applies a “hybrid approach” which contains both general obligations applying to all Members and service sectors, and specific obligations applying only to designated Members and service sectors. The general obligations of the GATS include: most favored nation treatment; transparency; market access; national treatment; and the avoidance of unnecessary barriers to trade.

3.4 *WTO Committees*

The WTO Committee on Trade and the Environment (CTE), created in 1994 during the Uruguay Round, is a forum for WTO members to discuss trade and environment issues, including, ecolabelling. The Committee on Technical Barriers to Trade has also discussed ecolabelling. The 2001 Doha Declaration instructs the CTE to pursue work particularly on ecolabelling, specifically to examine whether existing WTO rules stand in the way of environmental labeling (including ecolabelling) policies, and to identify any rules that should be clarified.

The CTE has recognized that ecolabelling programs can be valuable environmental policy instruments. Nonetheless, there is also concern that the use of ecolabelling schemes may reduce market access for some countries because of the potential for prohibitively expensive or complicated requirements, or by the inadvertent or intentional creation of disguised restrictions on trade.

The most controversial issue has been the role of npr PPMs in ecolabelling certification criteria. While the inclusion of npr PPMs allows consumers to determine which products were produced through processes with least adverse environmental impacts, it has been argued that the use of npr PPMs restricts the ability of countries to make choices on locally appropriate production methods.

More specifically, the debate over npr PPMs hinges on whether the use of npr PPMs in ecolabelling criteria are covered by the TBT Agreement. Legal and practical arguments have been made on both sides of the issue, but developing countries generally favour the interpretation that npr PPMs are not covered. The underlying policy consideration behind this legal argument is the concern that TBT coverage would give increased legitimacy under WTO rules to discrimination between products on the basis of npr PPMs. And, many developing countries fear that, if allowed, developed countries may use npr PPMs to dictate the domestic production methods of developing countries with regard not just to environmental matters, but also to other areas such as labour.

Developed countries arguing in favour of coverage, generally emphasize the importance of npr PPMs to furthering environmental policy objectives and also reason that npr PPM ecolabelling schemes should be covered so that the transparency requirements of the TBT Agreement would apply. They have pointed out that practically speaking, many ecolabelling schemes which utilize npr PPMs already exist, and these schemes should be subject to a discipline.

In addition to strengthened transparency requirements, other solutions to the potential market access problems associated with ecolabelling schemes have been discussed, including:

- the need for capacity building and technical and financial transfer for developing countries;
- equivalency and mutual recognition of standards, whereby countries would develop ecolabelling schemes that recognize the differing conditions and environmental standards of exporting countries; and
- harmonization of international labeling standards to facilitate compliance with ecolabelling requirements.

4. Analysis of the Type 1 Ecolabelling and Trade Interface

4.1 What are the Trade Concerns?

From a review of the WTO related agreements and related activities over the last few years, it appears that there are three major concerns:

- (i) that ecolabelling certification criteria which contain requirements related to the non-product aspects of production (ie npr PPMs) create an unnecessary barrier to trade;
- (ii) that ecolabelling programs limit access to the label; and
- (iii) that ecolabelling programs not follow the TBT Code of Good Conduct.

Whether or not voluntary ecolabelling programs need to properly address these concerns is, of course, also an issue of debate.

4.2 Are the Concerns Real (i.e. do they apply to GEN type 1 programs)?

In regard to the npr PPM concern, GEN type ecolabelling programs focus on environmental criteria which occur across the entire life cycle of products and not just exclusively on npr PPM requirements.

The degree to which ecolabelling criteria contain npr PPM related requirements, and the degree to which such requirements have trade implications, have not been thoroughly studied or analyzed either globally or with respect to individual ecolabelling schemes. However, a recently conducted, limited analysis of some 140 certification criteria indicated that 10% contained npr PPMs, and a further 12% had specific requirements for recycled content. (It can be argued that recycled content may or may not be considered an npr PPM related requirement, as the recycled material does get transferred with the product, but may not affect product characteristics or performance.)

Of the 14 (i.e.10%) criteria containing npr PPM related requirements:

- 1 was for a product that is not exported nor imported from off-shore (electricity);
- 11 were for pulp and paper products; and

- 2 were for products with organic and/or fair trade requirements, with both only being imported from off-shore (i.e. coffee and cotton clothing). Of the product criteria containing npr PPM requirements, no specific concerns have been raised, either directly or indirectly, as to their role in creating unnecessary obstacles to trade.

In regard to the concern about limiting access to the label specifically, and the concern about the application of the TBT Code of Good Conduct, the GEN has adopted the ISO 14024 principles as a code of good conduct. Based on a recent membership survey, all members surveyed indicated that they do not limit access to their label on any basis whatsoever. There is no “favoured nation” treatment, and most of the principles outlined in ISO 14024 are being met.

Furthermore, and again in the context of GEN type ecolabels, a number of studies into ecolabelling and trade concerns have been conducted over the past several years. Of note, and in spite of the theoretical potential for these concerns to be realized, none have identified specific problem areas or programs where the trade problems have actually arisen.

4.3 Who Has These Concerns?

While the issues have been debated for some considerable time, the concerns, insofar as GEN type programs are concerned, have never been specific to programs or actual issues, and no concrete complaint has been lodged. Thus it is difficult to have constructive dialogue when the concerns are raised in the context of more general policy discussions within intergovernmental organizations not directly involved with actually designing or implementing ecolabelling programs.

4.4 Do the WTO Agreements Actually Apply to Ecolabelling?

This is one of the questions being debated within the WTO at this time. Regardless of the answer, the GEN is interested in working with the WTO to help inform the debate and to communicate the various initiatives underway and planned. GEN members believe that the various GEN initiatives and plans will demonstrate that GEN members operate their programs in a manner consistent with the intent of the various agreements under the WTO.

4.5 Do the Environmental Exception Clauses Apply?

Again, this is one of the questions being debated. Regardless, the GEN supports the intention of the trade rules to ensure a fair and open marketplace, and wants to work with the WTO to ensure that the ecolabelling debates take place in a fully informed environment.

4.6 Can Trade Actually be an Environmental Policy Tool?

Increasingly, countries and companies are viewing GEN type ecolabelling as a trade opportunity. A number of multinationals are interested in (and monitoring) the GEN’s work on common criteria and mutual recognition systems. As well, a number of developing countries are seeking to develop credible ecolabelling

programs with assistance from the GEN in order to have preferred access to consumers with "green appetites". With this as an evolving reality, it is not much of a stretch to consider the potential for trade to become a sound Environmental Policy Tool. Certainly, the recent WSSD, the ongoing work in the field of sustainable production and consumption, and the evolving work around integrated product policies all point in that direction.

5. The GEN and Trade Concerns

For a number of reasons, the GEN is evolving into much more than a forum for information exchange and is now involved in technical assistance and inter-program cooperation. This evolution has been driven by a number of factors:

- business and commerce are increasingly globalized, both from a manufacturing and a trade perspective;
- the environment issue is finding its way onto the agendas of the business and manufacturing communities, and governments at all levels;
- ecolabelling programs are spreading into, and expanding in all regions of the world;
- the potential for ecolabelling to cause unnecessary barriers to trade is being discussed and analyzed in a number of intergovernmental bodies, most notably the WTO; and
- the ISO has developed standards for environmental labelling including ISO 14024 for Type 1 (ecolabelling) programs.

In response to these drivers, GEN officials and members have undertaken a number of initiatives over the past few years, including:

- development of a mutual recognition system specific to ecolabelling, based on the four step process of:
 - (a) information exchange;
 - (b) development of mutual confidence;
 - (c) agreement on mutual recognition of testing and auditing;
 - (d) mutual recognition of certification on a product specific basis.The system is designed to facilitate (in terms of costs and time) the certification of products from different parts of the world, as well as between ecolabelling practitioners.
- development of mutual recognition agreements on a bilateral pilot basis. Several bilateral pilot agreements have been initiated to test out the system concept described above and to gain experience in working with other ecolabelling programs or schemes.
- development of harmonized and common core environmental criteria for certain products. Where criteria are harmonized, no difference in criteria is

seen at the application stage. Common core criteria, on the other hand, provides for a common base of criteria, while allowing different programs to supplement the criteria with additional requirements that may be unique to that program's sphere of influence because of different ecosystem sensitivities, climatic conditions or cultural reasons;

- representation at ISO meetings. The ISO's Technical Committee (TC) 207 was charged with developing a series of environmental labelling standards under its 14000 series of environmental standards. The GEN received liaison status with ISO and continues to participate in ISO work. In particular, during the development of ISO 14024 (the Type I standard) a number of GEN members were active as members of different national delegations and as part of the GEN Liaison member delegation;
- adoption of ISO 14024 as a "code of good practice". The GEN continues to work toward better coordination between ecolabelling programs and to help new and existing member programs operate in a manner consistent with the intent of ISO 14024;
- self assessments of conformity against the ISO 14024 principles. In 2001/2002, the GEN conducted an assessment exercise to determine the degree to which members were operating their programs in a manner consistent with ISO 14024. The results were very positive;
- presentations on ecolabelling to a range of international inter-governmental bodies. GEN members, and the GEN itself, are often invited to speak on the subject of ecolabelling at intergovernmental, national and industry sponsored meetings and conferences. As a result, the GEN is increasingly being recognized as a competent and responsible organization;
- provision of technical assistance to countries seeking to develop ecolabelling programs. To date, the GEN and its members have worked with evolving programs in numerous countries and with its own members to assist in the appropriate development and evolution of ecolabelling programs; and
- the GEN is currently exploring the development and implementation of an international coordinated ecolabelling system. The basic concept is to expand the four-step mutual recognition system (described above) across the GEN membership. The issue has already been discussed at the 2001 and 2002 GEN Annual General Meetings (AGM) in Norway and Taiwan respectively. The membership has directed the GEN Board of Directors to further develop the related issues and return to the 2003 AGM with recommendations on whether, how and when to proceed.

6. Conclusions

1. If inappropriately practiced, any type of environmental labelling could have the potential to create unnecessary barriers to trade.
2. To date, no concrete concerns have been addressed at specific Type I ecolabelling programs. Concerns have tended to be more general and aimed at environmental labelling at large without clarification of the type of label being criticized.
3. A range of WTO agreements do address standards and standardizing bodies, but were negotiated without specific knowledge of or concern about ecolabelling.
4. There remains a lack of clarification and agreement on the degree to which WTO agreements apply to Type 1 ecolabelling programs.
5. ISO 14024 does contain many of the requirements under the relevant WTO agreements and is referenced by GEN members as a code of good conduct.
6. Ecolabelling is growing around the world, in both developed and developing countries. The environmental attributes of products have the potential to create trade opportunities, particularly for goods aimed at developed country markets, regardless of point of origin.

There is a need to find sustainable solutions instead of being preoccupied with the more negative threats and difficulties. This will allow the debate to take a turn for the better, and the energy now spent on arguing about potential problems re-focused to evaluate and pursue opportunities.