

LABELLING SCHEMES FOR ENVIRONMENTAL PURPOSES
UNICE UPDATED POSITION PAPER¹

I. Introduction

At the Fourth Ministerial Conference in Doha in November 2001, WTO members instructed the Committee on Trade and Environment of the WTO (CTE) to pursue its work on labelling requirements for environmental purposes and to make recommendations to the Fifth Ministerial Conference with respect to future actions, including negotiations.² UNICE welcomes the inclusion of Trade in Environment in the Doha mandate in general and of environmental labelling in the Doha work programme. UNICE believes that environmental labelling can contribute to solving the contentious issue of the non-product related Process and Production Methods (PPMs) which is at the heart of the trade and environment debate. However, certain conditions must be met in order to ensure that environmental labelling schemes are compatible with WTO principles.

II. Eco-Labeling and the WTO

1. The non-discrimination principle must be respected

Eco-labelling schemes generally aim to address the whole life-cycle of a product, taking into account the raw materials, production, distribution, use and disposal. The award of an eco-label is therefore often based on a life-cycle analysis which takes into account non-product-related Process and Production methods (PPMs).³

If eco-labels are awarded on the basis of non-product related PPMs, it is indispensable that this does not impact the WTO "like product" principle, i.e. a product carrying an eco-label and a like-product not carrying an eco-label must be treated in the same way, unless they can be distinguished in accordance with the GATT Border Tax Adjustment Criteria of: physical characteristics, end use, tariff classification, consumer tastes and habits.

¹ UNICE position on Eco-Labeling for the WTO Discussions on Trade and Environment (22 July 1996).

² Paragraph 32 of the DDA states: "We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to: (...) iii) labelling requirements for environmental purposes. (...)"

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries."

³ Process and Production methods (PPMs) refer to the manner in which products are manufactured or processed; often the production method is not traceable in the product itself (non-product related PPM). Eco-labelling schemes, by addressing the whole life-cycle of a product, usually include non-product related PPM criteria for the award of a label.

2. A clarification that TBT provisions apply to environmental labelling schemes is desirable

There is a controversy among WTO members on whether the Technical Barriers to Trade Agreement (TBT) or the General Agreement on Tariffs and Trade (GATT) applies to eco-labelling schemes in general, in particular to those based non-product-related PPMs. In order to obtain legal certainty it is crucial that WTO members clarify this issue. UNICE expects negotiations on eco-labelling to start within the context of the TBT Agreement after the 5th Ministerial Meeting in Cancun. European industry would welcome a clarification that the TBT Agreement applies to both mandatory and voluntary eco-labelling schemes which award labels in general and on the grounds of non-product related PPMs.

The TBT Agreement prohibits the establishment of unnecessary barriers to trade and provides for transparency. Annex 3 of the TBT Agreement contains a Code of Good Practice under which standardising bodies (i.e. private bodies) can accept to respect the TBT provisions, in particular, the notion that a standard should not create an unnecessary barrier to international trade.

Industry is aware that there is not only an increase in “public” environmental labelling programmes but also of eco-label schemes developed by private bodies. The proliferation of new environmental labelling schemes by private bodies can lead to confusion for consumers and manufacturers and may even establish contradictory criteria between the different labels.

According to our interpretation a voluntary eco-label system is a *standard* as defined by Annex 1 of the TBT Agreement. Therefore voluntary eco-labelling schemes should be notified to the WTO and are governed by Annex 3 TBT Agreement provided that the awarding body is recognized as a standardising body.

UNICE calls on WTO members either to apply Annex 3 TBT directly to voluntary eco-labelling schemes or to negotiate new requirements on how the TBT Agreement should address voluntary eco-labelling schemes by outlining in a new annex to what extent such schemes and the awarding bodies should be subjected to the TBT obligations. Annex 3 could serve as an example, *mutatis mutandis*, for these negotiations.

III. Potential trade distorting effects of environmental labelling schemes

Environmental labelling schemes may discriminate against foreign manufacturers and therefore have trade distorting effects. This applies not only to mandatory eco-labelling schemes but also to voluntary schemes: “Successful” voluntary eco-labelling programmes influence consumer demand and in this respect can create considerable pressures for manufacturers to use the label. A fundamental problem inherent to eco-labelling is that it is often more costly and burdensome for foreign producers to obtain an eco-label than for domestic producers, thus constituting an unnecessary barrier to international trade.

Business calls on governments to apply WTO principles on environmental labelling schemes so that direct and indirect discrimination against foreign manufacturers can be minimized.

1. Minimizing direct discrimination

Direct discrimination occurs when foreign and domestic firms have uneven access to information or when foreign companies cannot participate and contribute in setting up an eco-labelling scheme.

Transparency in the development and application of mandatory and voluntary eco-labelling systems is key to minimize direct discrimination. Transparency is achieved by providing appropriate notice and opportunity for consultation to domestic and foreign producers alike and through the notification of environmental labelling schemes under the TBT Agreement. Environmental labelling schemes must be open for all producers, domestic and foreign ones.

2. Minimizing indirect discrimination

Indirect discrimination occurs when the criteria which must be fulfilled to obtain an eco-label have a domestic bias because they rely on domestic production standards, conditions and environmental priorities. There are several approaches to minimize indirect discrimination which are also encouraged by the TBT Agreement.

To take into account differing regional conditions and environmental priorities in different countries, UNICE urges that the concept of ecological equivalence be applied in the criteria setting process of eco-labelling schemes. This means that the foreign producers' efforts and achievements are recognised as equivalent to the fulfilment of the domestic process and production criteria.⁴ All parties should have the right to invoke the WTO dispute settlement mechanism against any GATT/TBT -contradictory use of eco-labelling systems which do not respect ecological equivalence.

UNICE furthermore encourages the development and application of international standards on criteria setting. The International Organisation of Standardization (ISO) has developed general standards on eco-labelling procedures. The advantage of using international standards for labelling procedures is that these standards are negotiated multilaterally and take into account the interest of all participants.

Mutual recognition between two or more eco-labelling schemes is an alternative approach supported by UNICE to overcome the problem of differing environmental labelling conditions. This means that if a product receives a label in one scheme, it would be automatically eligible for an eco-label in another labelling scheme, provided that the same product category exists in both schemes.

3. Problems for developing countries

Eco-labelling schemes may cause particular problems to developing countries. It is extremely difficult for these countries to obtain an environmental label as the criteria are usually based on technologically advanced process and production methods. In addition, the costs for carrying out a life-cycle analysis, certification and compliance often are too burdensome for developing countries.

⁴ For example, in some industrialised countries the reduction of SO₂ emissions, which can contribute to producing acid rain, is an important goal but may be less important for developing countries. A country suffering from desertification may, on the other hand, award eco-labels for water-saving production techniques. Eco-labelling schemes therefore have to be flexible enough to take into account the regional variations in environmental policies and conditions (criteria of ecological equivalence).

Exporters in developing countries should have a fair chance to award an eco-label for their products. As developing countries in most cases will not be able to meet the technologically advanced PPMs required for obtaining a label, it will be crucial that efforts by developing country producers on environmental improvements of their products be recognised as equivalent to the achievements by producers from industrialised countries under the principle of special and differential treatment. Additionally, developing countries should be encouraged to participate in international negotiations on the development and the harmonisation of international standards, for instance by providing them with technical assistance.

IV. Conclusion

UNICE believes that environmental labelling schemes contribute to solve the PPM issue which is at the heart of the trade and environment debate. Crucial for environmental labelling schemes is that the non-discrimination principle is respected, i.e. like-products not carrying a label must not be treated differently to like-products carrying a label.

In addition, WTO members should be entitled to challenge eco-labelling schemes in the WTO if certain criteria are not met. For instance: if the criteria for awarding the label are domestically biased or if the procedure is not transparent or not open for consultations. Approaches like ecological equivalence, mutual recognition, the use and further development of international standards for the criteria setting process will help making environmental labelling schemes WTO-compatible.

Business furthermore calls on WTO members to take the opportunity at the forthcoming 5th Ministerial Conference in Cancun to include environmental labelling in the DDA negotiations with the view to clarifying the extent to which the relevant TBT provisions apply to environmental labelling.

UNICE will review/complement this position as the negotiations develop in Geneva on this matter. It is keen to continue the dialogue with all interested parties in order to contribute to an approach which is acceptable to all WTO members.
