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# WTO : PERSPECTIVE OF SUSTAINABLE DEVELOPMENT AND ECOLABELLING

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**Abstract**

GATT 1947 pertains environmental aspects such as a Group on Environmental Measures and International Trade (EMIT) in 1971. The role of EMIT has now been transformed into the Committee on Trade and Environment (CTE) of the GATT/WTO (1994) particularly Article XX. GATT/WTO is multilateral trade organization that often attacked by environmentalist groups because the Organization undermines the environment. However, this paper analyzes WTO in term of sustainable development and eco-labelling perspective. The article uses the method of legal research namely descriptive-analitical and normative approach. The research depicts the preamble of WTO mentiones that one of aims of the WTO is the idea of sustainable development in relation to the optimal use of the world's resources and the need to protect and preserve the environment in a manner consistent with the various levels of national economic development. Beside that, WTO also highlights eco-labelling programmes as stated by Agreement on Technical Barriers to Trade (TBT Agreement) and Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

## Introduction

The Marrakesh Agreement Establishing the World Trade Organization (WTO) demonstrates the growing awareness of the relationship between trade and the environment issues. In other word, WTO pertains environmental aspects such as the concept of sustainable development and eco-labelling. GATT (General Agreement on Tariffs and Trade) as its predecessor also covers environmental aspects such as a Group on Environmental Measures and International Trade (EMIT). The role of EMIT has now been transformed into the Committee on Trade and Environment (CTE) of the WTO. EMIT has ever handled cases on the conflict between trade and environment interests, and now CTE is the principal forum for discussing issues on relationship between trade and environment. The CTE is responsible to integrate the relationship between multilateral environmental agreements (MEAs) and the WTO Rules in order to preserve and protect the environment as a whole in the world.[1]

[1] See some cases : Canada-Measures Affecting Exports of Unprocessed Herring and Salmon (1988), Thailand-Restrictions on Importation of and Internal Taxes on Cigarettes (1990), US-Taxes on Automobiles (1994), US-Import Prohibition of Certain Shrimp and Shrimp Products (1998), US-Tuna-Dolphin dispute I and II (1991 and 1994), and others.

The preamble of WTO provides *recognizing that their relations in the field of trade and economic endeavour should be concluded with a view ti raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optiomal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.* This work divided into four parts, namely, GATT/WTO and the environmental aspects, WTO and Sustainable Development, WTO and Eco-labelling, and Concluding Remarks.

**GATT/WTO and The Environment Aspects**

The fundamental finding of the WTO is that increased trade and economic integration reinforce the need for greater environmental cooperation on global and transborder problems. This is so because economic integrations makes it harder for governments to adopt optimal environmental policies unilaterally. The Organization explains that the globalization of the world economy may have reduced the regulatory autonomy of countries, thereby making it more difficult to upgrade environmental standards unless as part of a concerted effort among nations.

This shows that GATT/WTO as multilateral trade organization that also regulated environmental aspects such as the establishment of EMIT of GATT 1947 and CTE of WTO, but actually the original GATT 1947 did not mention the word 'environment' anywhere in the text until year 1979. Therefore, a number of GATT/WTO articles are of direct relevance to trade-related environmental issues as follows:[2]

1. Article I: the most-favoured nation (MFN) obligation pursuant to which contracting Parties must grant each other advantages as favourable as those given in respect of like product to any other country;
2. Article II: the obligation to adhere to bound schedules of tariff concessions exchanged during negotiating rounds;
3. Article III: the national treatment obligation pursuant to which countries must treat imported like products no less favourably than like domestic product;
4. Article X: the transparency obligation requiring trade restriction to be punished promptly and administered uniformly and impartially;
5. Article XI: the prohibition of quantitative restrictions on import and export of products;
6. Article XX: the general exceptions: subject to the requirement that such measures are not applicable in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restric-

[2] See more detail *Agreement Establishing the World Trade Organization*, Marrakesh, 15 April 1994. WTO and the environment also refer to settle disputes cases concerning trade and environment claimed by members of WTO in the light of export-import of trade.

tion on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(b) necessary to protect human, animal or plant life or health;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Article XX (b) and (g) are regarded as offering 'a basis for deviating from GATT principles in support of environmental policies'. In the environmental context, Article XX functions as a 'savings clause' permitting certain environmental policies that might otherwise violate the GATT to be applied as GATT legal, provided that these measures meet the requirements of either Article XX(b) or (g), and control with the requirements of Article XX's preamble.[3]

**The Concept of Sustainble Development and WTO Rules**

Based on the preamble mentioned above, that one of aims of the WTO is the idea of sustainable development in relation to the optimal use of the world's resources and the need to protect and preserve the environment in a manner consistent with the various levels of national economic development. This commitment is transformed into the Committee on Trade and Environment (CTE) as one of committees under the WTO that refers to environmental matters. There are three priority programs in the CTE, namely trade policy, environmental policy, and sustainable development. Therefore, the CTE has central position including programme and schedule of meeting about environmental protection and preservation worldwide. The CTE has long advocated the use of multilateral solutions to environmental issues, the corollary of which was deemed by the CTE to be resorting to unilateral TREMs (trade-related environmental measures) to the least extentpossble.[4]

According to the World Commission on Environment and Development in 1987 Brundtland Report *Our Common Future* stated that 'sustainable development' is *development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs*. In this regard, there are two key concepts are contained within sustainable development: the concept of needs in particular the essential needs of the present generation, and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs. The Brundtland Report identified critical objectives for environment and development policies reflected in the concept of sustainable development: reviving growth and changing its quality; meeting essential needs for jobs,

[3] Rao, PK. (Ed.), *The World Trade Organization and the Environment*, Great Britain, Macmillan Press Ltd. and St. Martin's Press LLC, 2000, USA, p. 35.

[4] *See* the Committee on Trade and Environment Report 1996 or http://www.wto.org/english/tratop_e/envir-e/envir_e/.htm.

foods, energy, water, and sanitation; ensuring a sustainable development level of population; conserving and enhancing the resources base; reorienting technology and managing risk; and merging environment and economics in decision-making.[5]

Therefore, the concept of sustainable may be found expressly or implicitly in many environmental treaties and other instruments in the period prior to the publication of the Brundtland Report in 1987. Nevertheless, the Brundtland Report is commonly viewed as the point at which sustainable development became a broad global policy objective and set the international community on the path which led to UNCED and the body of rules referred to as international law in the field of sustainable development, but distinguished from international environmental law.[6] In short, definition of sustainable development and its components refer to the result of Brundtland Report in 1987 where Brundtland was former Prime Minister of Norway who made the report titled *Our Common Future* that has great effect to government policy all over the world especially in term of environmental improvement.

Although there exists no generally accepted international legal definition of sustainable development, although academic efforts have tended to identify four components. These are reflected in the instruments adopted at UNCED. Taken together, these four elements can be considered to provide the core legal elements of "sustainable development" as used in the Brundtland Report.[7] Briefly, international law recognizes a principle of sustainable development, the term needs to be taken in the context of its historic evolution as reflecting a range of procedural and substantive commitments and obligations.

These are primarily, but not exclusively, recognition of : (a) the need to take into consideration the needs of present and future generations; (b) the acceptance, on environmental protection grounds, of limits placed upon the use and exploitation of natural resources; (c)the role of equitable principles in the allocation of rights and obligations; and (d)the need to integrate all aspects of environment and development.

Besides that, there are some principles emerge as having particular relevance in the field of sustainable development as follow: [8]

1. Principle 21 of Stockholm Declaration (1972) and Principle 2 of Rio Declaration (1992) : "State have,

[5] The World Commission on Environment and Development, 1987, Our Common Future, Oxford University Press, p. 43.

[6] The forty chapters of Agenda 21 elaborate upon these issues while taken together they constitute the framework for international law in the field of sustainable development. Only fourteen chapters address issues which are primarily 'environmental'. The international law of sustainable development is therefore broader than international environmental law; apart from environmental issues, it includes the social and economic dimension of development, the participatory role of major groups, and financial and other means of implementation. As a result, international environmental law is part of the international law of sustainable development, but it narrower in scope.

[7] The concept of sustainable development can be found in the Rio Declaration (such as Principle 4), the Climate Change (such as Article 3), the Biodiversity Convention (such as Article 1) and Agenda 21.

[8] Winfried Lang (Ed.), 1995, *Sustainable Development and International Law*, Graham & Troatman/Martinus Nijhoff, London/Boston/Dordrecht, pp. 62-66

in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction";

2. The principle of good neighbourliness and international cooperation: "the principle of good neighbourliness enunciated in Article 74 of the UN Charter in relation to social, economic and commercial matters, has been integrated into sustainable development. In the environmental field, the principle is traditionally considered by reference to the application of the maxim *sic utere tuo ut alienum non laedas*. Meanwhile, the commitment to cooperation is reflected in the large body of treaties and other international acts that now have environmental and other objectives related to sustainable development.

It is obvious that natural resources must be used as wisely as possible in accordance with the principle of sustainable development and the question arises for the WTO rules that does this Agreement preside over sustainable development? As stated in the preamble of the WTO that "... *while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment* and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development."

Additionally, Chapter 4(B)(c) of Agenda 21 provides: "Assisting individuals and households to make environmentally sound purchasing decisions. 4.20. The recent emergence in many countries of a more environmentally conscious consumer public, combined with increased interest on the part of some industries in providing environmentally sound consumer products, is a significant development that should be encouraged. Governments and international organizations, together with the private sector, should develop criteria and methodologies for the assessment of environmental impacts and resources requirements throughout the full life cycle of products and processes. Results of those assessments should be transformed into clear indicators in order to inform consumers and decision makers. 4.21. Governments, in cooperation with industry and other relevant groups, should encourage expansion of *environmental labelling* and other environmentally related product information programmes designed to assist consumers to make informed choices. 4.22. They should also encourage the emergence of an informed consumer public and assist individuals and households to make environmentally informed choices by: (a) providing information on the consequences of consumption choices and behaviour so as to encourage demand for environmentally sound products and use of products; (b) making consumers aware of the health and environmental impact of products,

through such means as consumer legislation and *environmental labelling*; (c) encourage specific consumer-oriented programmes such as recycling and deposit/refused system.

Therefore, the Agenda 21 constitutes the most explicit support for environmental labelling schemes to be found in any widely approved international environmental instrument. In contrast to Agenda 21, *the Rio Declaration* does not specifically mention environmental labelling, but there are two principles contained in the Rio have particular importance for environmental labelling programs, that is to say, *Principle 10* states that: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided", and *Principle 12* provides that: "States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purpose should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus. Principle 12 is the heart of the Rio Declaration with respect to the relationship between trade, development and the environment.

In short, it might be clear that the establishment of the CTE is much better than its predecessor, EMIT of GATT 1947, to regulate and to apply environmental aspects of the WTO and objective of sustainable development in national policy on environmental improvement and as efforts to reduce environmental degradation and to prevent environmental pollution including the use of eco-labelling programmes. It is also clear that eco-labelling programmes from the perspective of the CTE, Agenda 21, and Rio Declaration is to achieve (or as a tool of) the implementation sustainable development as stated by the preamble of the WTO. Consequently, Members of the WTO are fully responsible to practice these rules into environmental protection and preservation in the light of sustainable development concept. The application of the GATT/WTO might be appropriate in settlement of disputes among countries in conformity with trade and environment conflicts.[9]

**Eco-Labelling in General**

**A. Ecological or Environmental Labelling (Eco-Label)**

Environmental label is awarded based on an analysis of a product's 'life-cycle, life-cycle analy-

[9] *See* further Chaper IV on a case study concerning trade and environment disputes such as Tuna-Dolphin Dispute.

sis also known as cradle-to-grave analysis refers to an examination of a product's environmental implications, often beginning with an analysis of the raw materials from which a product is manufactured, and including an analysis of the environmental implications of a product's use and ultimate disposal.[10]

Environmental labelling is a term used to describe product labels that provide consumers with ecological or environmental information about some or all of the phases in a product's life-cycle including a product's production, use and disposal. In principle, products that bear an environmental label will sell better than products without such a label, and producers of labelled products will benefit financially, despite having met higher environmental standards. This is based on the fact that environmental labels make it possible for consumers to differentiate products based on environmental criteria, allowing consumers to purchase environmentally less damaging products, and encouraging their purchase even in instances when they are more expensive than competing products. By providing the potential for greater sales and profits to producers meeting higher environmental standards, environmental labels rely on market mechanisms to encourage the improvement of domestic and foreign environmental practices.[11]

There is some confusion concerning how to define the terms 'environmental labelling' and 'ecolabelling' as well as confusion concerning the classification of various labelling schemes. In 1991 study, *Environmental Labelling in OECD Countries* (the Organization for Economic Cooperation and Development) defined 'environmental labelling' as the 'voluntary granting of labels by a private or public body in order to inform consumers and thereby promote consumer products which are determined to be environmentally more friendly than other functionally and competitively similar product'. In 1993, the Secretariat of the United Nations Conference on Trade and Development (UNCTAD), relying to some extent on the OECD's early work, defined 'environmental labelling' as the 'use of labels in order to inform consumers that a labelled product is environmentally more friendly relative to other products in the same category'. Both works identified three categories of labels, 'life-cycle labels', 'single issue labels' (such as a product is recyclable, biodegradable, dolphin-safe) and 'negative labels' (such as a product is flammable or poisonous, dangerous to the health e.g. packs of cigarettes and alcoholic beverage containers), but excluded the latter two from their definition of 'environmental labelling'. Therefore, environmental labelling in OECD is interested mainly in life-cycle approaches.

[10] Arthur E.Appleton (Ed.), 1997, *Environmental Labelling Programmes: International Trade Law Implications*, International Environmental Law & Policy Series, Kluwer Law International, first Edition, London, UK. , 1997, p. 13.

[11] Ibid., p. xviii.

UNCTAD's 1993 work went a step further, equating the term 'environmental labelling' and 'ecolabelling' with product labels that reflect the results of life-cycle analysis.[12]

In other words, the award of an environmental label based on a 'life-cycle analysis (an ecolabel) entails an examination of the environmental implications associated with all phases of a product's life, comprising its 'production (including raw material use), distribution, use and disposal.[13] This is frequently referred to in the literature as a cradle-to-grave analysis. In theory, a life-cycle analysis provides a through study of the environmental ramification associated with a decision to purchase a particular product. Consumers, however, would not normally see the details of such an analysis since little specific information about a product appears on a life-cycle ecolabel.[14]

Furthermore, ecological labelling or environmental labelling schemes comprise the voluntary granting of labels, by private or public body, which inform consumers and thereby promote consumers products which are determined to be environmentally more friendly, or perhaps more accurately, less harmful than, other functionally similar product. Eco-labels are awarded on the basis of an overall environmental assessment of a product, rather than on specific, limited features. Thus, eco-labels exclude single issues such as recyclability or biodegradability and negative descriptions or warnings (such as 'flammable').[15]

The term 'eco-labelling' generally refers to programmes under which certain products are awarded the right to affix a label attesting to the consumer that the product meets some standard of environmental friendliness. Eco-labelling programmes may serve a wide variety of purpose, but they generally are intended to improve the image of the labelled product by identifying products that are preferable, from environmental standpoint, to similar products. Proponents thus consider eco-labelling programs an alternative to the traditional governmental regulation of industry, by harnessing market forces to shift production and consumption toward less environmentally harmful products and manufacturing processes. Others question their effectiveness, however, arguing that eco-labels rarely give consumers the whole picture, may be based on criteria that become outdated as technology advances, may apply a single set of standards to varying environmental conditions, and may fail to compare products that consumers consider substitutes thus misdirecting consumers demand.[16]

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[12] *Ibid.*, pp. 1-2.

[13] *Ibid.*, p. 5. The work of *Environmental Labelling* in OECD states that a 'meaningful assessment' must include an evalusation of the products's effect on thre 'three separate media (air,water,soil), as well as considering the use of non-renewable resources and energy, product durability, ease of repair, and safety'.

[14] Ibid., p.5.

[15] Andrew Herrup, 1999, "Eco-Labels : Benefits uncertain, Impacts Unclear ?", *European Environmental Law Review*, pp. 144 -153.

[16] Kenneth P.Ewing and Richard G.Tarasofsky, *Op.cit.*, pp. 28-35.

However, eco-labelling program depends upon a third party to classify the levels of environmental harm that will differentiate products within the same category. This practice is different from first party certification, where a manufacturer provides some form of label on its own products to trumpet the products environmental record, or second party certification where a trade association puts some form of label on member products that meet certain criteria. While an eco-label could focus solely on the environmental impacts of the usage of a product, most programs cover the entire life-cycle from generation through usage to disposal including the product's production process method (PPM). This life-cycle analysis looks at raw materials used, production, distribution, end use and final disposal.[17]

Eco-labelling programmes rely on voluntary participation by the affected producers. That is, manufacturers are not required to submit their products for review but do so in order to receive the benefit of the environmental seal of approval. Eco-label programs may be government-run or independent. In order to show independence from government direction and control, many eco-label programs strive to be self-funding. In practice, most programs have some government connection and rely upon government funding. Eco-labelling programmes have taken a wide variety of forms, and almost all are voluntary (although they may become so important as to become a *de facto* prerequisite to participation in the market). So-called "third party" programmes are established by private organizations (*e.g.* Green Seal in USA, or by or with the help of governments (e.g. Germany's Blue Angel, and India's Ecomark). Other, "second-party" programmes are recognized by industry groups (*e.g.* the Chemical Manufacturer's Association's Responsible Care Program).[18]

The proponents of eco-labels argue that the programmes are created to protect the environment, aid consumers and may benefit manufacturers, all while avoiding heavy-handed government regulations and instead relying on the market for their success. Unlike environmental regulations or enforcement, eco-label schemes are precautionary and are designed to discontinue environmental problems before they start, by encouraging consumers to purchase products with fewer environmental problems. Manufacturers are then pressured to produce goods that conform to standards protective of the environment. The Company of products that seek eco-labels for their products must account for the environmental impacts of those products. These producers will pay close attention to the environmental impacts of their products throughout their life-cycle and will identify areas where they may improve environmental practices.[19]

[17] Andrew Herrup, *Op.cit.*, p. 145.

[18] *Ibid.*, p. 146.

[19] *Ibid.*, pp. 147-148.

Eco-labels are designed to allow consumers to choose to purchase products less harmful to the environment, without having to invest too much time and effort in determining which product actually are the least harmful, by providing succinct and accurate information about the environmental impacts of the products. Since eco-label programmes rely upon third party certification, these may eliminate consumer confusion caused by first party 'environmentally friendly' claims that may or may not be accurate. Along with increasing the market share of environmentally sensitive products, eco-labels are designed to better focus consumers on environmental issues and increase awareness of 'green consumerism' in general. Obviously, manufacturers that participate in eco-label programs should advantages by improved sales as consumers recognize that participants' goods are better for the environment. Participant may also commonly improve the manufacturer's image and reputation. Beside that, according to eco-label supporters, the manufacturers do not need to worry about continuing compliance with cumbersome government environmental regulations.

As a result, the eco-label process is initiated by an independent committee of experts that determines or suggests which product categories should be eligible for labelling. This group focuses on products that have a definite impact on the environment and that may be made environmentally more benign. The committee then defines the product category's scope, and this in very important, as it determines which types of goods are appropriate for the eco-label. Depending upon how the product category is drawn up, the universe of eligible goods may vary dramatically. For example, under the German *Blue Angel* eco-label program, the product category for paints excludes water-based paints.

Historically, eco-label programs began in the late 1970s with the *Blue Angel* program developed by the Federal Republic of Germany, namely the first *Blue Angel* environmental label was issued in 1978 and the program now covers thousands of individual products in dozens of product categories.[20] Canada and Japan began programs in 1988, while Norway, Sweden and Finlandia (Nordic Council) began issuing labels in 1991, and the European Union began developing eco-labels in 1992 where the EC Eco-label Award Scheme was established on March 23 1992 by adoption of Council Regulation (EEC) No. 880/92. Similarly, the United States does not have a government associated eco-label program, though the privately funded and directed Green Seals program has been active.

In addition, on 20 October 1993, President Clinton signed an *Executive Order* (Executive Order 12873:Federal Acquisition, Recycling and Waste Prevention) charging federal agencies to increase their procurement of goods and services that are environmentally preferable and

[20] *Ibid.*

that are made from recycled materials. If the US decided that the best way to meet this charge is to purchase only products with eco-labes, the decision would spur the development of eco-labels criteria for a variety of new categories and would significantly increase the market share of products that already possess economically. Eco-labels program creation, product designation and computer reliance on eco-labels are not the true barometer of eco-label effectiveness. After all, eco-label programs are designed to aid the environment. Only if the programs produce actual environment benefits can they be considered successful, while limited data is available to measure this success, the Swedish eco-label program, the *Nordic Swan* program and the German Blue Angel program have claimed direct responsibility for measure environmental improvements.[21]

The current eco-label program have had mixed success while the German and Scandinavian programs now are well-established and relied upon by consumers,[22] others have been plagued by problems. The European Union, for instance, the program has yet make much of an impact on consumers and may actually have led to greater confusion.[23] Many eco-label programs have developed under at least some government control. As noted, many are not self-funding and rely upon governments to partially support them. Many programs also depend upon governments for technical support and for help in administering the program. Thereby, eco-label programs are rarely entirely independent of at least some level of government control. Therefore, governments have a crucial part to facilitate the program of eco-labels, not only for industry but also environmental protection and preservation.[24]

More clearly, *the International Standards Organization* (ISO) which is in the process of developing a series of environmental standards including labelling standards has taken a somewhat different approach, dividing labelling schemes into three

[21] *Ibid.*

[22] By April 1996, the Swedish eco-label program, Swedish Environmental Choice or Good Green Buy, had established criteria for 27 products. The Nordic Swan (eco-labelling program for Norway, Sweden, Finland and Iceland) has awarded labels to over 1,000 products. See further *Eco-Labelling: Actual Effects of Selected Programmes*, 1997.

[23] *See Eco-Labelling : Actual Effects of Selected Programmes*, OECD, 1997, pp. 42-43., They mentioned that "the stated goal of the EU scheme, which is voluntary, is to help consumers and business purchase products with the smallest harmful impact on the environment. In fact, in February 1996, Ritt Bjerragard, the EU Environment Commissioner, described the program as a "waste of time" that was"not really functioning very well". *See Business and the Economy, Eco-labelling: EU Plan 'Not Functioning Well' Minister*, Greenwire, American Political Network, 5 March 1996; B.Barnard, *Good News for the United States: Green Label Flops in European Union*, Journal of Commerce, 4 March 1996. One problem has been that instead of replacing national schemes throughout Europe, the EU scheme has simply added another eco-labelling scheme. Producers that obtain eco-labels still have to deal with national programs, as well as the EU program, despite the fact that the two programs may set different product categories and criteria".

[24] Andrew Herrup, *Op.cit.*, p.147.

classes, namely Type I, Type II, and Type III. Type I labels are life-cycle labels viewed as voluntary schemes that utilize pre-set criteria established by third parties to evaluate a product's environmental characteristics throughout its life-cycle. Type II schemes are labels based on manufacturer's claim concerning individual environmental characteristics, such schemes are generally based on self-certification. Type III labels provide environmental information resulting from an independent scientific assessment of established criteria concerning a particular class of products. Type III schemes do not imply a product preference. Instead, they allow consumers to choose products based on enumerated environmental information. The ISO approach is structured to permit the development of internationally recognized labelling standards. This is apparent from ISO efforts to develop terms, definitions and standards to be used in specific environmental labelling programmes. The recent work of UNCTAD has begun to adopt this ISO terminology and to refer to Type I labels (life-cycle labels) as eco-labels.[25]

## B. Eco-Label Program and the WTO Rules

The GATT Secretariat in 1992 defined 'environmental labelling' as 'systems' for the usually voluntary granting of labels by a private or public body in order to inform consumers. The approach taken by the GATT Secretariat differs from the early approaches of the OECD and UNCTAD in that the GATT Secretariat implicitly included single issue and negative labels in its definition of 'environmental labelling'.[26] One possible explanation for this is that the GATT Secretariat was particularly interested in how labelling schemes might impede trade, and appears to have adopted a broader definition that would permit it to study all labelling schemes with trade implications. By 1993, the GATT Secretariat was differentiating 'environmental labelling' from 'eco-labelling', using the term 'environmental labelling' to refer to all types of labelling schemes, and employing the term 'eco-labelling' to refer only to labels awarded based on a life-cycle analysis.

Voluntary single product labels describe one or more specific traits in a product's life-cycle, but do not provide an overall view of a product's environmental characteristics. Single issue labels are often utilized by manufacturers who perceive them as offering a marketing advantage. Well-known examples include the label on

[25] Arthur E. Appleton, *Op.cit.*, pp.3-5.

[26] Arthur E. Appleton, *Op.cit.*, p. 2, packaging and labelling requirements, Note by the Secretariat, GATT Document TRE/W/3 (29 September 1992), the GATT Secretariat only distinguished between 'positive labelling programmes' and 'other labelling programmes'. Positive labelling programmes were defined as 'national or sub-national labelling programmes which promote products which are determined to be environmentally more friendly than other functionally and competitively similar products. Others labelling programmes included mandatory warning labels (which communicate environmental hazards), labels highlighting product hazards or certain product features, non-enforceable labelling guidelines, private labelling schemes, and industry initiated schemes.

a can of tuna reading 'dolphin safe' wood product labels reading 'manufactured from sustainably harvested timber', labels on aerosol cans reading 'CFC-free' or 'ozone friendly', product labels describing energy/fuel consumption and various recyclability symbols. From a consumer viewpoint, single issue labels can permit consumers to identify products with a particular environmental trait that they deem important, while life-cycle labels provide little direct consumer information, and require considerable investigation on the part of consumers to determine the relevant environmental considerations that went into the award of a particular label.[27]

Mandatory single issue labelling schemes generally require that certain products be labelled to reflect an attribute of the product, be it an attribute associated with its production, use or disposal. Examples include rules requiring that products be labelled with respect to their contents, recyclability, energy consumption and emissions. There are two types of mandatory labelling requirements are worthy of note. The first are mandatory labelling requirements that reveal negative characteristics about products ('negative label'). These labels identify possible dangers to human, animal or plant life or health associated with a product's use or disposal. Examples include labels informing users that a particular product is dangerous, poisonous or otherwise noxious. While such labels may discourage sales, these requirements generally escape criticism because they are designed to warn consumers of important health and safety risks. Also noteworthy are mandatory labelling requirements designed to reflect how a particular product is manufactured – the 'processes and production methods' (PPM) used in its manufacture.[28]

The WTO Secretariat highlights that environmental humiliation caused by market failure and previous government policy failures. In this regard, market failure and government policy failure have correlations with the application of eco-labelling program as mentioned above. Market and governments have crucial role to utilize the concept of sustainable development and also eco-label agenda in the traffic of international trade especially trade in goods. Although eco-labelling program is still unsure but governments as members of the WTO could stress that eco-label structure as one of alternative to use wisely environment. On the basis of globalisation and trade liberalization, market, manufacturer, and government have key responsibility to undergo environmental-friendly trade particularly eco-labelling.

Consequently, the big question will rise in this case whether the WTO rules cover the program or not because according the Report 1999 presents five mini-case studies of agriculture, deforestation, global warming, acid rain, overfishing.[29] The question

[27] Arthur E.Appleton, *Op.cit.*, p. 8.

[28] *Ibid.*, p. 10.

[29] Steve Charnovitz, "World Trade and the Environment: A Review of the New WTO Report", *the Georgetown International Environmental Law Review*, Vol. 12Op.cit., 1999, pp. 526-529.

of eco-label is not described by the WTO Report, but on the other hand, agriculture, deforestation, and overfishing can be related to the eco-labelling program. Deforestation, for example, can occur as a result of exploration and exploitation of unwisely timber conducted by one country which exported to other nation. So, for some states that concerned to environmental protection and preservation have requested to apply eco-labelling for the timber production.

However, the Marrakesh Agreement Establishing the WTO is the most important legal instrument applicable to environmental labelling schemes, not only is product labelling specifically mentioned in two instruments included in Annex IA of the WTO Agreement, but also the obligations set forth in the WTO Agreement with respect to labelling can be enforced by its parties pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes (or Dispute Settlement Understanding – DSU) contained therein. Annex IA of the WTO which regulates eco-labelling is Agreement on Technical Barriers to Trade (TBT Agreement) and Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).[30]

Therefore, the existence of eco-labelling is still being debated by many parties especially developing countries whether it constitute trade barrier or as effort to improve the quality of environment while international trade in term of GATT/WTO. The CTE itself has been studying environmental labelling schemes in particular voluntary eco-labelling, but some debate of question concerning environmental labelling programs such as : (1) how should the non-product-related aspects of voluntary eco-labelling programmes be treated for TBT Agreement purposes? while the TBT Agreement's Code of Good Practice apparently does not apply to non-product-related standards); (2) Is it significant that TBT Article 2.1 and Paragraph D of the Code of Good Practice restate MFN and national treatment obligation in a manner different from that found in Articles I and III of GATT 1994?; (3) For Article III:4 Purposes, are voluntary eco-labelling schemes to be considered as 'laws', 'regulation' or 'requirements'?; (4) For Article III Purposes, do voluntary eco-labelling schemes 'affect' the 'internal sale' or 'offering for sale' of products?; (5) For Article III Purposes, are voluntary eco-labelling schemes applied so as to afford protection to domestic production? Do they have the 'aim and effect' of altering the conditions of competition?; (6) What are the implications of the 1991 Tuna Panel report for voluntary eco-labelling schemes in particular schemes concerning NPR-PPMs?; (7) Is harmonisation of voluntary eco-labelling schemes practicable? (8) Do eco-labelling programmes further a legitimate objective? Is the influence of foreign NPR-PPMs a legitimate objective? Should the non-exclusive list of legitimate objectives set forth in TBT Article 2.2 be applied to Paragraph E of the Code of Good

[30] Arthur E.Appleton, Op.cit.,p.85.

Practice? and are voluntary eco-labelling schemes more trade-restrictive than necessary to fulfil a legitimate objective? Do voluntary eco-labelling schemes restrict trade ?.

However, the TBT Agreement is binding on WTO Members is probably rule concerning eco-label program. The primary purpose of the TBT Agreement is to assure that non-tariffs measures do not create unnecessary obstacles to international trade. The TBT Agreement is one of the Multilateral Agreements on Trade in Goods that appear in Annex IA of the WTO Agreement. The TBT Agreement became the single most important portion of the WTO affecting the use of environmental labelling schemes.

The TBT Agreement was negotiated by the GATT Contracting Parties at the Tokyo Round of negotiations in the 1970s and it applies to all WTO members and includes rules on standards, technical regulations and test and certification systems. TBT was developed to prevent countries from introducing new barrier to international trade as countries eliminated tariffs and quotas. Its goal is to ensure that technical regulations and standards including packaging, marking and labelling requirements, but do not create unnecessary obstacles to international trade. The TBT covers all product regulations, such as those on size, grade and quality – it is no primarily aimed at environmental regulations. Furthermore, the TBT extends to non-governmental barriers as well as governmental barriers and would apply to government or non-government eco-label programs, requiring that relevant international standards be used as a basis for national regulations except when such international standards or relevant parts of them would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, where legitimate objectives include the protection of the environment.[31]

Moreover, the question whether the Agreement on Technical Barriers to Trade rules cover eco-labelling schemes has caused great debate among WTO member nations and among interested groups. Environmental non-governmental organizations (NGOs), for example, vociferously argue that the WTO should not review eco-labels programs while many industries state that the WTO should regulate the program. The differences between these two sides are still discussed over eco-labels that should be regulated or not but in fact, the policy of the United States is that the TBT covers all types of eco-label, and that the TBT Agreement provides sufficient flexibility to permit unincorporated or non-product related PPM-based (or life-cycle analysis based) eco-labelling subject to appropriate trade disciplines.[32] Canada, for example, as State that concerns about the protection of the environment, is unsure and wants to make things clear by making all eco-label programs ad-

[31] *See* Article 2.2. and 2.4., the Agreement on Technical Barriers to Trade.

[32] "US Signals It Will Not Seek Rewrite of WTO Rules for Environment", *Inside US Trade,* Vol.17, No. 12, March 26, 1999, p. 20.

here to globally agreed guidelines, and Canada tried to revive its proposal that eco-labels generally are covered by the TBT Agreement, but recognized that some doubted whether unincorporated PPMs were covered. Canada argued that eco-labels are a fact of life and should be covered under the TBT Agreement if they meet certain international guidelines (which currently do not exist).[33]

On the other hand, environmental NGOs argue with the Agreement on Technical Barriers to Trade of the WTO jurisdiction over eco-labels because they consider that the WTO has a trade bias that will not take into account the legitimate environmental goals of eco-label programs.[34] Similarly, these groups believe the WTO could attempt to create rules and regulations to cover eco-labels which would biased in favour of trade goals and would improperly fetter eco-label programs and their environmental aims. On the contrary, industry or manufacturing groups welcome that TBT of the WTO jurisdiction over eco-label programs and have lobbied for the development of binding rules and regulations under the Agreement on Technical Barriers to Trade of the WTO.[35]

In other word, the environmental NGOs are correct in that a WTO Panel could rule on whether a specific eco-label program constitutes a technical barrier to trade. However, the Panel cannot operate *sua sponte*, and a WTO member must bring a complaint before the Body (Dispute Settlement Body). Industry group in the US, for example, has pushed for the country to bring such a complaint against the European Union, but the US has yet to do so. Consequently, Should the WTO Panel hold that the eco-label program constitutes a technical barrier to trade, the US would be permitted ti impose retaliatory trade sanctions against the EU. More generally, the WTO could create rules and regulations to cover eco-label programs. Again, industry has pushed for this. However, the widely diverging views held by WTO member nations on ecolabelling makes this unlikely in the near future, even should the member nations agree that the TBT covered eco-label programs.

The TBT Agreement differentiates between technical regulations and standards, and establishes rules applicable to both.[36] A technical regu-

[33] Andrew Herrup, *Op.cit.*, p. 150, *See also* J Zarocostas, "Eco-Labelling" is a Sticky Issue, say Developing Countries at WTO Talks, *Journal of Commerce*, August 20, 1996.

[34] *See* further Letter of June 25, 1996 to Carol Browner, Administrator, United States Environmental Protection Agency and Ambassador Charlene Barshefsky, United States Trade Representative; signed by Noran Dean, President, Green Seal, John Adams, Executive Director, Natural Resources Defence Council Inc., Carl Pope, Executive Director, Sierra Club and Mark van Putten, President, National Wildlife Federation, as quoted by Andrew, see *supra note* 41, pp. 151-152.

[35] *See* "USCIB Calls on Administration to Push New Ecolabelling Rules", *Inside United States Trade*, August 23, 1996, p. 21, .

[36] The term 'technical specification', utilized in the Tokyo Round Standard Code, has been eliminated, and in its place broader definitions have been provided for the terms 'technical regulation' and 'standard', Compare Tokyo Round Standard Code, the Tokyo Round Agreement on Technical Barrier to Trade (entered into force January 1, 1980).

lation is defined as a:
"Document which lays down product characteristics or their *related processes and production methods* including the applicable administrative provisions with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or *labelling requirements as they apply to a product, process or production method*".[37]

A standard is defined as a:
"Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or *related processes and production methods*, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or *labelling requirements as they apply to a product, process or production method*".[38]

Pursuant to the above definition, the difference between a technical regulation and a standard is that compliance with a technical regulation is mandatory while compliance with a standard is voluntary. The definitions of both technical regulations and standards explicitly include labelling requirements. The technical requirements of mandatory labelling schemes *can* fall with the category of a technical regulation, and the standards forming a part of a voluntary environmental labelling schemes *can* fall with the definition of a standard. The qualifier 'can' is used because labelling requirements for processes or production methods (PPMs) that are not product-related appear to be outside the purview of the TBT Agreement.[39]

Furthermore, Article 2.1 of the TBT Agreement provides that: "Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country", This is both a national treatment and a most-favoured-nation (MFN) requirement, because technical regulations cannot be used to favour domestic over foreign like products (national treatment) or certain foreign like products over other foreign like product (MFN treatment), and

[37] Annex 1: the TBT Agreement
[38] *Ibid.*

[39] Arthur E. Appleton, *Op.cit.*, p. 92. In his footnote, "GATT Law and Environment: Related Issues Affecting the Trade of Developing Countries", 28 *Journal of World Trade* 1995 (June 1994), that defines related process and production methods (PPMs) as 'those which have an effect on the product characteristics such as its quality or performance. An example of a product-related PPM is a requirement that wood or leather products not contain more than 5 mg/kg of PCPs (pentachlorophenol), on the contrary, an example of a non-product-related PPM would be a prohibition on the production or importation of all products manufactured using PCPs, regardless of a particular product's final PCP content. An example of a potentially product-related PPM regulation is provided by Rege within the context of the Uruguay Round TBT Agreement, his example is that of a regulation in State A prohibiting the import of State B's pharmaceuticals, because its manufacturing plants do not meet State A's cleanliness requirements, and thus produce medicine deemed by State A to be contaminated.

these are more generally to Article I and III of the GATT.[40]

In brief, the broader implication of the TBT Agreement for environmental labelling program are several fold. *Firstly*, there will be an increased international effort to harmonize technical regulations, standards, and conformity assessment procedures applicable to labelling schemes. This attempt is already reflected in the ISO's ongoing work to standardize certain definitions applicable to labelling schemes. *Secondly*, there will be added emphasis on mutual recognition of technical regulations, as well as on ensuring the transparency of technical regulations and standards utilized in national and local labelling schemes through measures such as notification, publication and, where appropriate, consultation. Although mutual recognition of standards is not part of the Code, it may be encouraged through TBT Article 6.3 (mutual recognition of conformity assessment procedures).[41] *Thirdly*, labelling standards and technical regulations will be subject to the principle of national and most-favoured-national treatment, and the requirement that they do not create unnecessary obstacles to international trade. The implementation of TBT Agreement to environmental labelling program only with practices of the WTO Members will become clear how stringently the Agreement will be applied to the program. The attitude of the Members with respect to trade-related environmental issues is likely to influence the interpretation of the TBT Agreement when technical regulation and standards applicable to environmental labelling schemes are at issue. As a result, Members of the WTO will have to decide how to reconcile and integrate trade and development needs with legitimate environmental policy goals.[42]

**Concluding Remarks**

GATT/WTO is multilateral trade rules system that will come effectively force in 2010 for developed economies and 2020 for developing countries in the light of trade liberalization and globalization. The WTO is a successor of the GATT was established in 1994 at the Marrakesh Agreement including GATT 1994 as amendment of GATT 1947. Therefore, the world economy is getting more and more integrated through liberalization and open market supported by the WTO. GATT/WTO is ready to implement that ambitious rules especially by industrialised countries, but many argues such as non-government organisation that this regime gives negative environmental impact. Consequently, the existence of WTO is often 'attacked' because they don't care about the environment, but this paper has found GATT/WTO Rules related to environmental aspects such the EMIT in 1971.

The most essential GATT/WTO system which related to environmental aspects is Article XX about general exceptions as follows: subject to the requirement that such measures are not applicable in a manner which would constitute

[40] *Ibid*, p.95.

[41] See further this Article of the TBT Agreement

[42] Arthur E.Appleton, *Op.cit.*, pp. 134-135.

a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (b) necessary to protect human, animal or plant life or health; and (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

The preamble of WTO has clearly stated that the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment, while sustainable development is sustainable development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs. The most important rules of WTO is the establishment of the Committee on Trade and Environment (CTE) which has ten work's program. The CTE is a principal forum for discussing issues on relationship between trade and its environmental aspects in accordance with the growth of economic and the environmental concerns incldiuing eco-labelling programmes.

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