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LEGAL AND TRADE ISSUES RELATED TO ECO-LABELLING: BANGLADESH PERSPECTIVES

Abstract

This article raises certain legal and policy issues arising from the use of labelling for environmental purposes (eco-labels) in international trade, and the implications for market access, particularly for products from developing countries. Eco-labelling was identified as a significant area in Agenda 21 (1992) and in Doha Declaration (2001). More recently, the Johannesburg Plan of Implementation (WSSD, 2002) also recognised the importance of consumer information related to sustainable consumption and explicitly noted the need to continue work in this area. Eco-labels may potentially enhance the terms of trade of those developing countries able to accurately translate the mood of industrialised country consumers into environmentally friendly product development. There are also hopes that eco-labelling could provide new opportunities for attracting capital investment and joint ventures in developing countries, such as Bangladesh.

1. Introduction

The main question for this paper is twofold: whether the WTO rules presently ensure the right balance between eco-labelling and market access; and what opportunities and challenges it creates for

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Bangladesh.¹ Of particular interest will be specific legal questions relating to the processes and production methods (PPM), methodological issue of setting eco-labels and technical issues relating to standard setting. Eco-labelling represents a sound 'market-based' alternative which boosts consumer choice and raises environmental standards. Eco-labelling schemes may help consumers make decisions about the products they buy and whether they are environmentally friendly.² Though the eco-labelling was identified as a significant area in Agenda 21 (1992),³ importance of further work in this area has again been identified in Doha Ministerial Declaration 2001(DMD). The WTO Committee on Trade and Environment (CTE) is expressly given the responsibility to steer debate on this issue by paragraph 32 of the DMD.⁴ More recently, the Johannesburg Plan of Implementation (WSSD, 2002) recognises the importance of consumer information related to sustainable consumption and explicitly noted the need to continue work in this area.⁵

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- 1 This paper is part of FIELD's ongoing work with UNCTAD on capacity building in trade and environment. A paper on 'Legal and Policy Issues in the Market Access Implications of Labelling for Environmental Purposes' has already been presented at the Sub-regional meeting in Bangkok on eco-labelling issue. See, <www.unctad.org>
 - 2 R. Vossenaar, 'UNCTAD's work on Eco-labelling' (2000) at 4. Paper presented in the International Seminar on Experiences in Eco-labelling, Sao Paulo, 10 May, 2000.
 - 3 Agenda 21 explicitly encourages the expansion of environmental labelling, as well as the life-cycle product assessment (LCA). Chapter 4 (B) (c) of Agenda 21. U.N. Doc. A/CONF 151/4 (1992).
 - 4 Paragraph 32 of the Doha WTO Declaration states that Ministers '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.'
 - 5 Paragraph 14 (a) of the Implementation Plan makes a specific reference to life cycle analysis noting that "...to accelerate the shift towards sustainable consumption... would require actions at all levels to: (a) Identify specific

Some recent works in this area have taken account of the challenges and concerns of developing countries and WTO rules.⁶ Methodological approaches in this area include legal analysis, case studies and stakeholder dialogues, economic analysis, political analysis, and environmental analysis, for example in the area of life-cycle analysis.⁷ The case study and stakeholder dialogue approach are particularly common in this area of research. OECD (1997) and UNCTAD (2002) carried out extensive research programmes on the trade effects of eco-labelling and other environment-related technical barriers to trade, employing a case

activities, tools, policies, measures and monitoring and assessment mechanisms, including, where appropriate, lifecycle analysis and national indicators for measuring progress, bearing in mind that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries;...” Paragraph 14 (e) encourages the development and adoption “where appropriate, on a voluntary basis, effective, transparent, verifiable, non-misleading and non-discriminatory consumer information tools to provide information relating to sustainable consumption and production, including human health and safety aspects. These tools should not be used as disguised trade barriers;” The full text of the Implementation Plan is at: http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm

- 6 Market access effects of eco-labels were the subject of studies and/or discussions by the Economic and Social Commission for Asia and the Pacific (ESCAP, 1997), the International Trade Centre (ITC (UNCTAD/WTO), 1996), UNCTAD (S. Zarrilli, V. Jha & R. Vossenaar (eds.), 1997), and the Organization for Economic Co-operation and Development (OECD, 1997). No conclusive evidence has been established by the few available studies on trade effects. For more details, WTO. *Eco-packaging: overview of recent work in other international fora*, Note by Committee on Trade and Environment, WT/CTE/W/75 (1998). Papers prepared by OECD, WTO Committee on Trade and Environment, and UNEP as well as some selected academic articles have been included as general reference at the end of this document.
- 7 Concerted Action on Trade and Environment paper on SPS, TBT and Eco-labelling. <http://130.37.129.100/english/o_of/instituten/IVM/research/cate/pdf/labelling.pdf>

study methodology. The OECD (1997) study notes that, overall, eco-labelling has only been moderately successful with the individual consumer. However, eco-labels may have important market impact when retailers specify that they want to purchase eco-labelled products, or when they become a tool for identifying environmentally preferable products for government procurement and other institutional purchasers. The ESCAP (1997) study finds that although there was no documented evidence that developing countries had been adversely affected by eco-labelling, labour-intensive exports of South Asia and timber-based exports of South East Asia had been particularly sensitive to eco-labelling. Based on case study research, OECD (2002) argues that many private eco-labelling schemes are trade distorting, discriminatory, and environmentally disappointing. The study suggests more public participation of private eco-labelling schemes to encourage transparency and non-discrimination.

2. Definition of Eco-labelling

Eco-labelling is defined as a voluntary method of environmental performance certification and labelling that is practised around the world.⁸ UNEP defines eco-labels as those :

that are part of a wholly *voluntary program* in which an *independent body* awards a certificate on the basis of an *overall assessment* of the environmental impact of a good

8 Environmental labelling, on the other hand, includes mandatory and voluntary government and non-governmental schemes. Vitalis also identified eco-labels as voluntary schemes in OECD (2002) at 2. A useful discussion on environmental labelling is found in J. Salzman, 'The Trade Implications of Trends in Eco-labelling' in OECD (1994) *Life Cycle Management and Trade*, OECD, Paris. Cited in Vitalis report (2002), 'Private voluntary eco-labels: trade distorting, discriminatory and environmentally disappointing'. Paris: OECD.

during its *entire life-cycle*, and distinguish from other types of labelling schemes. [*Emphasis added*]⁹

According to Appleton,¹⁰ eco-labels are 'voluntary labels which convey *information to consumers* about the *environmental implications* associated with all elements in the *product's 'life'*, i.e., its production, distribution, use and disposal.'*[Emphasis added]* Eco-labelling identifies overall environmental preference of a product or service within a specific product/service category based on life cycle considerations. Approximately 28 countries have established national eco-labelling programmes and a large number of them are voluntary.¹¹ It is important to note that the DMD mandate relates to "*labelling for environmental purposes*", which implies that discussion in the CTE will encompass both mandatory and voluntary eco-labelling schemes. However, this paper concentrates on the voluntary eco-labelling programmes and explores the role played by WTO and how to increase the efficiency of eco-labelling without restricting market access.

There are many different labelling programmes, run by governments, private companies and non-governmental organizations, but the International Organisation for Standardisation (ISO) has divided it in three categories (see Box 1). At present, there is no universally accepted standard for eco-labelling. Many countries have adopted their own standards for eco-labelling and consumers can make their own decisions about which product to buy. These countries may not be in violation of

9 UNEP: *Criteria in environmental labelling: A comparative analysis of environmental criteria in selected eco-labelling scheme* (1996) at 2.

10 A.E. Appleton, 'Environmental labelling Defined and Policy Implications Described', in *Environmental Labelling Programmes: International Trade Law Implications*, (1997) Kluwer Law International, London.

11 WTO Committee on Trade and Environment, Information relevant to the consideration of the market access effects of eco-labelling schemes, WT/CTE/W/150 (29 June 2000) at 6-10.

WTO rules as long as a country applies these standards equally to all domestically produced goods and across all imported goods, and as long as the labels apply only to the characteristics of the actual good.¹² This issue, however, raises a question of whether the WTO should create its own or adopt a set of eco-labelling standards to clear the confusion created by many different sets of standards.

Box 1 Eco-labels according to International Organisation for Standardisation (ISO)

Type I: voluntary, multiple criteria based third party practitioners programmes that award labels based on life cycle considerations (Germany's Blue Angel, Nordic White Swan)

Type II: Informative environmental self declaration claims ('organically-grown', 'energy-efficient', 'ozone-friendly')

Type III: quantified product information labels based on independent verification using preset indices ('eco-toxic', 'biodegradable')

Source: www.iso.org

2.1 Voluntary, government sponsored labelling schemes

This scheme involves government participation in their formation, administration and financing.¹³ Participation of

12 D. Downes and B. Van Dyke. 1998. *Fisheries Conservation and Trade Rules: Ensuring that Trade Law Promotes Sustainable Fisheries*, Centre for International Environmental Law and Greenpeace: Washington, D.C. p.32-36. <<http://www.ciel.org/Publications/fisheriesconservation.pdf>>

13 A. Okubo, 'Environmental Labelling Programs and the GATT/WTO Regime', (1999) *Georgetown International Environmental Law Review*, 11, 599 at 605.

government ensures consistency of criteria, balance of views of different parties, greater accountability to public and greater transparency.¹⁴ This scheme follows life cycle assessment (LCA). It is a method in which the environmental effects of a particular product are evaluated by analysis of the inputs and outputs of materials and energy and other important factors related to the product.¹⁵ LCA informs the consumer about real reductions of environmental stress, and not merely the transfer of environmental harm in stages of the product's life cycle.¹⁶ Though many existing eco-labelling programmes may not apply a comprehensive LCA, the overall trend of eco-labelling programmes is for inclusion of more extensive life-cycle criteria, specifically production criteria,¹⁷ and towards a 'cradle-to-grave' approach. In such an approach, the environmental impacts are assessed throughout the life cycle of the product, which includes the procurement of raw materials, production, distribution, consumption and disposal.¹⁸ One example of a voluntary, government sponsored scheme is the German Blue Angel Programme.¹⁹

14 See V. Jha, *Eco-labelling and International Trade*. UNCTAD, UN Doc 70 at 10, UNCTAD/OSG/DP/70 (1993), cited by A. Okubo, *supra*, at 606.

15 A. Okubo, *supra*, at 606.

16 See R. Vossenaar, 'Eco-Labelling and International Trade: The Main Issues', in S. Zarrilli *et al.* (eds) *Eco-labelling and International Trade* (1997) 21, at 22.

17 See, Organisation for Economic Co-operation and Development (OECD), *Life Cycle Management and Trade* (1994) at 8-9.

18 See, UNEP Criteria in environmental labelling: A comparative analysis of environmental criteria in selected eco-labelling scheme (1996) at 2.

19 As a world's first eco-labelling programme, Blue Angel was launched in 1977 by the German Federal Minister and the Ministers for Environmental protection of the Federal State. It was aimed at promoting more environmentally sound products, relative to other in the same product categories. The programme is administered by the government through three bodies: the Federal Environment Agency (FEA), the Environmental label

2.2 *Voluntary, private sponsored labelling schemes*

This scheme does not involve the government and has two sub-categories: (i) those with criteria imposed by third parties and (ii) those based on self-declaration by manufacturers.²⁰ Most of such scheme is based on the criteria imposed by third parties and similar to government sponsored schemes. It relies on multiple criteria and life cycle assessment of a product. Because of lack of participation by the government, the compatibility with GATT becomes important. Example is a 'green seal of approval' which is run by a US-based independent environmental labelling organisation. It receives no government sponsorship and its administrative and operative procedures, including standard setting process are similar to those of government schemes.²¹

Schemes based on self-declaration claims are made without independent third party certification. These are made by manufacturers, importers, distributors, retailers or anyone likely to benefit from such claim. It can take such forms as statement symbols, package labels and advertising. The draft standard of the ISO lists several guidelines for the use of self-declaration claims and any explanatory statements, including accuracy, non-deceptiveness and specificity.²²

3. **Legal and Trade Issues Related to Eco-labelling**

Before discussing eco-labels and related trade and legal issues, it is important to note the contribution of few other international

Jury (ELJ), and the Institute for Quality Assurance and labelling (RAL). A Blue Angel uses LCA to identify the most important environmental aspects of a product's life cycle.

20 A. Okubo, *supra*, at 607.

21 A. Okubo, *supra*, at 607. Also, Centre for Renewable Energy and Sustainable Technology, Green Seal's product Certification process. <http://www.solstice.crest.org/environment/>>

22 A. Okubo, *supra*, at 609.

organizations actively involved in developing, analyzing and exploring the issue of eco-labelling.²³ The relevant questions are: (i) to what extent the TBT agreement covers the issue of eco-labelling; and (ii) relationship of PPM and non-product related PPM with the TBT agreement.

The rules of the WTO exist to support the progressive liberalisation of trade among its Members. Those Members are, with the exception of the European Community, all governments. By and large, it is the activities of governments that will come under the scrutiny of the multilateral trading system, rather than the activities of individuals or non-governmental organisations. It is this principal focus on the activities of governments that poses a challenge to the WTO in considering non-governmental eco-labelling schemes.

Four basic GATT rules are relevant to determining whether voluntary eco-labelling schemes are compatible with WTO rules:

- Article I: the most favoured nation (MFN) principle which outlaws discrimination between products on the basis of the country from which they originate, or to which they are destined;

23 International organizations currently engaged in eco-labelling include the Organisation for Economic Co-operation and Development (OECD), the International Organization for Standardisation (ISO), the International Trade Centre (ITC), the United Nations Conference on Trade and Development (UNCTAD), and the Food and Agriculture Organization of the United Nations (FAO). For an overview of recent work undertaken by several of these organizations see WTO. *Eco-packaging; overview of recent work in other International Fora*, Note by Committee on Trade and Environment, WT/CTE/W/75 (1998), WTO: Geneva. A similar note, WT/CTE/W/45 (15 April 1997) was prepared by the WTO Secretariat on Eco-labelling. See <www.wto.org>

- Article III: national treatment principle which prohibits discrimination between domestic and 'like' imported products under internal regulations;
- Article XI: which outlaws most types of quantitative restrictions; and
- Article XX: which contains exceptions to the basic rules of the GATT. Two paragraphs are particularly relevant to environmental measures; Article XX (b) and Article XX (g).

In considering whether these rules would apply to voluntary eco-labelling schemes, it is worth noting that first, only schemes that amount to "laws, regulations and requirements" can be considered under Article III. Whether they do so will depend in part on the degree of government influence and control in their operation. Second, the national treatment provision of Article III applies to measures only if they "affect" the internal sale, offering for sale, purchase, transportation, distribution, or use of products. It is unclear what this means for voluntary eco-labelling schemes. Third, GATT Article XXIII permits dispute settlement proceedings to be initiated in any case where a party considers that "any benefit accruing to it directly or indirectly" under international law is being "nullified or impaired". This could potentially broaden the scope for challenging eco-labelling schemes within the WTO.²⁴

Whether a voluntary government sponsored eco-labelling programme is consistent with GATT was decided in the *Tuna*

24 FIELD Briefing Paper on 'Legal and Policy Issues in the Market Access Implications of Labelling for Environmental Purposes' presented at the Sub-regional Brainstorming Workshop (Asia) on Specific Trade and Environment Issues in Paragraphs 31 and 32 of the Doha Ministerial Declaration in preparation for the Cancun WTO Ministerial Conference (30 July-1 August 2003, Bangkok) at 11.

Dolphin I case.²⁵ The panel examined whether the labelling provisions restricted the sale of tuna products in the US and thereby discriminated against Mexican products. The panel found that the labelling scheme was voluntary and did not restrict the sale of tuna products in the US. Moreover, the provisions did not make 'the right to sell of tuna products...conditional upon the use of tuna harvesting methods'.²⁶ In addition, all tuna product labelling provisions regardless of its country origin had access to the use of the label. The panel found no inconsistency of the labelling provision with the GATT regime on the ground of the voluntary nature of the programme.²⁷ It also recognised that not only product characteristics but also voluntary labelling schemes based on non-product related PPMs are consistent with the GATT/WTO regime. The fact that a programme is based on non-product related PPMs may not necessarily constitute a violation of the GATT so long as it is voluntary, but the programme must be applied in a manner compatible with MFN and national treatment principles.²⁸

The past GATT cases²⁹ demonstrate that an action taken by private parties does not necessarily preclude the application of the

25 Dispute Panel Report on US: restrictions on Imports of Tuna, UN Doc DS21/R, reprinted in 30 ILM 1594.

26 para 5.43.

27 para 5.44.

28 A. Okubo, 'Environmental Labelling Programs and the GATT/WTO Regime', (1999) *Georgetown International Environmental Law Review* 599 at 623. The MFN principle requires all GATT/WTO parties to treat all foreign products in a non-discriminatory manner. The national treatment principle requires that the internal measures of GATT/WTO members treat foreign products no less favourably than like domestic products. There is also added prohibition on quantitative restrictions which prevents members from using quotas, embargoes, licensing schemes on imported and exported products.

29 GATT panel review pursuant to article XVI:5, 1960, GATT BISD (9th Supp.) (1960). GATT Panel report on Japan: Restrictions on Imports of

GATT. Private entities lose their private character if there is sufficient government involvement and such activities will fall under the scope of GATT. If the privately controlled scheme is not effectively controlled or influenced by the government, the programme is not subject to the GATT.

3.1 *The voluntary eco-labelling and the TBT Agreement*

One of the main issues is whether voluntary eco-labelling programmes are subject to the requirements of the Agreement on Technical Barriers to Trade (TBT).³⁰ According to this agreement, members cannot use technical regulations or standards to deny market access to or discriminate against imported goods except when they are operating by an internationally accepted set of standards/regulations.³¹ They have to ensure that members do not use technical regulations or standards as disguised measures to protect domestic industries from foreign competition.

The WTO Secretariat notes that 'well-designed eco-labelling programs can be effective instruments of environmental policy' so long as the key requirement of non-discrimination between foreign

Certain Agricultural Products, Feb 2, 1998, GATT BISD (35th Supp) at 5.3.5 91998).

- 30 This part of the discussion depends heavily on the papers by A. Okubo, 'Environmental Labelling Programs and the GATT/WTO Regime', (1999), *11 Georgetown International Environmental Law Review*, 599 and E. Bartenhagen, *The intersection of trade and environment: An examination of the impact of the TBT agreement on eco-labelling programmes.* (1997) *17 Virginia Environmental Law Journal*, 51.
- 31 The TBT Agreement distinguishes between technical regulations and standards. 'Technical regulations' are defined as mandatory requirements for products or related process and production methods (PPMs). 'Standards', in contrast, are defined as voluntary requirements for products or related process and production methods. Both regulations and standards may also relate to 'terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method' (TBT Agreement, Annex I).

and domestic products is honoured.³² The TBT agreement is also intended to reduce the extent to which technical regulations and standards operate as barriers to market access, primarily by encouraging the development of international standards.

The rules of the TBT Agreement, including its Code of Good Practice for the Preparation, Adoption and Application of Standards (the Code of Good Practice) are based on MFN and national treatment principle.³³ The rules of the TBT agreement stipulate that Members shall ensure that technical regulations and standards do not create unnecessary obstacles to trade (TBT Article 2.2 and Annex 3). Furthermore, States are required to ensure that technical regulations use international standards that already exist (or that are near completion), or relevant parts of them, as a basis for their technical regulations. One exception is when the international standards would be an ineffective or inappropriate means for the fulfilment of the regulations objectives.³⁴

International standards that could be recognised by the TBT agreement include those set by central government, local government or non-governmental standardising bodies.³⁵ International voluntary certification/labelling schemes and

32 See, WTO Webpage on Eco-Labeling: www.wto.org/wto/environ/eco.html.

33 Article III discusses the National Treatment Principle and Article I discusses the MFN principle. 'Like products', mentioned in Article I and III, has been defined in past GATT and WTO dispute panel decisions to mean products with the same or similar physical characteristics or end uses.

34 For instance: fundamental climatic, geographical, technological and infrastructural factors; national security requirements; the prevention of deceptive practices; and protection of human health and safety, animal or plant life or health, or the environment. (TBT, Article 2.4. and 5.4.).

35 D. Downes and B. Van Dyke. (1998). *Fisheries Conservation and Trade Rules: Ensuring that Trade Law Promotes Sustainable Fisheries*, Centre for International Environmental Law and Greenpeace: Washington, D.C. p.34.

industry-led initiatives could evolve to the point of serving as *de facto* international standards, without intervention from any inter-governmental process. For example, the International Federation of Organic Agricultural Movements (IFOAM), a non-governmental body has established standards that are the basis for national organic labelling in several countries, and has publicly accepted the Code of Good Practice of the TBT agreement.³⁶

3.2 *Obligations under the TBT Agreement*

In terms of standards, Members must ensure that standardising schemes operated by national governmental or intergovernmental agencies accept and comply with the Code of Good Practice (TBT agreement, Article 4.1). The extent to which the Code of Good Practice applies to local government and non-governmental standardising bodies depends on them accepting and complying with it.³⁷ Members are required to take such reasonable measures as may be available to them to ensure that local government and non-governmental standardising bodies as well as regional standardising bodies accept and comply with the Code of Good Practice (TBT agreement, Article 4.1).

The Code of Good Practice's substantive provisions require a standardising body to, *inter alia*, (i) adopt existing or imminent international standards, except where they would be ineffective or inappropriate, (ii) make reasonable efforts to harmonise standards at the international level, (iii) make every effort to avoid duplication or overlap with the work of other standardising bodies and achieve a national consensus on the standards they develop,³⁸

36 D. Downes and B. Van Dyke. (1998), *supra*, at 34.

37 A. Appleton (1997). *Environmental Labelling Programmes: Trade Law Implications*. Kluwer Law International. p. 123-124.

38 TBT Annex 3 does not specify precisely among whom the national consensus needs to be achieved. Presumably, the consensus should be among other relevant national standardizing bodies, but also with

and (iv) make available to any interested party within the territory of a Member a copy of a draft standard submitted for comments, its most recent work programme and standards which it has produced (TBT agreement, Annex 3).

The TBT agreement includes several specific provisions calling on all countries to ensure transparency in the development and application of standards and regulations, in particular, through the open dissemination of information about them.³⁹ It also calls on developed countries to recognize difficulties that developing countries may encounter in the formulation and application of technical regulations and standards, and to provide them advice and technical assistance for their endeavours in this regard (TBT, Article 11.). Developing country members are also to be provided with differential and more favourable treatment given their special development, financial and trade needs (TBT, Article 12).⁴⁰

government, industry and NGOs (such as environmental and consumer organizations).

- 39 This would include ensuring that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties and to provide documentation at an equitable price (if any) regarding adopted or proposed standards and technical regulations as well as conformity procedures (Article 10.1 and 10.4.). If a Member reaches agreement with another country or countries on issues related to technical regulations or standards that may have significant effects on trade, they are required to notify the Secretariat of the products covered by the agreement and provide a brief description of the Agreement (Article 10.7.).
- 40 For example, in the preparation and application of standards and technical regulations, Members shall take account of the needs of developing countries with a view to ensuring they do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members (Article 12). This may involve the provision of technical assistance, ensuring the active participation of developing country representatives in international standardizing bodies, and granting, upon request, specified, time-limited exceptions to obligations under the TBT.

3.3 Coverage of the Process and Production Methods (PPMs)

The question is whether the TBT Agreement is applicable to processes and production methods (PPM) and non-product related PPM? The view generally held in the trade community is that the TBT Agreement was not intended to apply to PPMs, unless the PPM is product-related, i.e., detectable in the final product.⁴¹ Voluntary eco-labelling schemes fall under the definition of 'standard' under the TBT agreement and such programme must meet Code of Good Practice under Annex 3. This means the voluntary eco-label must comply with the MFN, national treatment principles and the 'unnecessary obstacle to international trade' test.⁴² The code also orders the application of any international standards and imposes a number of notice and transparency requirements (TBT agreement, Annex 3).

As noted in the OECD (1997) Report, domestic PPM-related requirements are important policy tools for promoting sustainable development.⁴³ Domestic PPM-related measures are aimed at preventing environmental degradation caused by production processes. PPM-related regulations and measures can be essential

41 The WTO CTE failed to come to any conclusion regarding NPR-PPMs. WTO Report of the Committee on Trade and Environment (1996) showed a wide range of disagreement on the issue of whether NPR-PPM is covered by TBT Agreement. Without giving any clear answer, the CTE summed up advising member states adopting eco-labels based on NPR-PPMs to rely on the TBT agreement's notice and transparency requirements. CTE report (1996), at 32.

42 The obstacle test has not been defined in the Code and the GATT/WTO panel has not interpreted this phrase yet. However, if the necessary test of GATT panels adopted in relation to Article XX(b) is followed, the unnecessary obstacle test would require members challenging the eco-label 'to show that there is a significantly less trade restrictive measure that reasonable could be employed to achieve the same goals.' E. Bartenhagen, *op cit*, 17 VAELJ 51 at 72.

43 See, OECD. 1997. *op. cit.*, p.7

for controlling the environmental impact of consumption decisions. They also respond to the right of consumers to be informed about products they buy.⁴⁴ Finally, they offer the chance for greater efficiency because producers can compete to comply with standards in the most efficient way.

An argument presented against PPMs is that whereas conformity with product characteristic based standards can be assessed in either the producing country or the importing country, PPM-based requirements could be evaluated only on the site of production which could make this kind of assessment more expensive. There are added concerns that PPM-based regulations might compel producers to use less efficient or costly technologies, and/or restrict foreign suppliers' choice of technology.⁴⁵

A contentious issue under the topic of eco-labelling relates to processing and production methods (PPMs) which are not related to the product's characteristics (NPR-PPMs). The voluntary eco-labelling scheme certification criteria, in this case, include NPR-PPMs, i.e., production methods and processes that do not alter the physical characteristics of the product itself but cause less environmental impact in production and/or distribution. In case the environmental impact is entirely restricted to the producing country's territory, its sovereignty is arguably influenced if the foreign importing State were to promote an eco-labelling programme incorporating such NPR-PPMs, especially if criteria would be established without consultation.⁴⁶ The TBT agreement

44 *Ibid*, p.3

45 E. Bartenhagen, *op cit.*, at 73-74.

46 Cautionary note can be found in principle 12 of Rio Declaration (1992) which states that "Trade policy measures for environmental purposes 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

explicitly permits standards and regulations applied in the name of environmental protection only as regards the actual physical properties of the good, not the good's production process. The legality, therefore, of eco-labels on NPR-PPMs is contested under WTO law.⁴⁷

This issue becomes more important in the context of eco-labelling if one considers that the most relevant regulations or standards are those relating to PPMs and their environmental impacts. For example, criteria for eco-labels for fisheries products are likely to be based on LCA, whereby assessments of sustainability consider all phases of a product-production, processing, use and disposal. That is, eco-labels in the fisheries sector are likely to be predominantly awarded based on non-product-related criteria, particularly those related to harvesting methods which include type of gear used, level of by-catch, impacts on the marine habitats, compliance with management system and health of the stock of origin.⁴⁸

The tension between the use of LCA in eco-labelling schemes and the rules of on TBT Agreement is apparent. LCA is important in decision-making when choosing alternative raw materials and recycling strategies. Without LCA, such decisions could inadvertently cause adverse effects to the environment. An example is disposable diapers which were thought to be environmentally-friendly, but studies show that they do not biodegrade easily when buried deep in landfills. LCA is technically difficult and costly to implement, and developing countries are likely to lack the necessary expertise to conduct LCAs.

global environmental problems should, as far as possible, be based on an international consensus.”

47 See, for example, WTO. 1996. *Report of the Committee on Trade and Environment: Background, Analysis, Discussions and Proposals*, WT/CTE/1, WTO: Geneva.

48 D. Downes and B. Van Dyke, 1998. *op. cit.*, p.1

Furthermore, LCA-based environmental labels might have qualifying criteria based on NPR-PPMs. A simple example of a product based on NPR-PPM is a pencil derived from an environmentally sustainable forest. A consumer cannot differentiate between this pencil and one that is derived from a forest that is not managed in an environmentally sustainable manner.

There are concerns that distinctions between products based on PPMs could be based on: (i) unfair considerations to protect their own national industries against foreign competitions. For instance, regulations prohibiting products produced by workers earning less than a certain minimum wage; and (ii) well-intended but narrow understandings of what is environmentally sound that are derived from domestic ecological conditions which may not apply to conditions in distant countries. The prospect of distinctions based on PPMs also raises fears that some countries will be able to impose unfair economic pressure on other countries (frequently less developed than the importer) to match domestic environmental standards in their own jurisdiction or lose market access.⁴⁹ Developing countries, in particular, are often concerned that by broadening the scope of PPMs, there could be discrimination based on social PPM considerations (such as labour standards and human rights).⁵⁰

It is encouraging to note that the CTE meeting (2002)⁵¹ on labelling requirements agreed to involve the Secretariats of the Agriculture and Market Access Committee to provide an update on

49 Trade and Environment: A handbook (IISD and UNEP, 2000) at section 5.1. <http://iisd.ca/trade/handbook/default.htm>

50 Trade and Environment: A handbook (IISD and UNEP, 2000) at section 5.1. <http://iisd.ca/trade/handbook/default.htm>

51 8-9 October 2002.

developments on negotiations in those fora.⁵² Though the question of whether CTE has a mandate to discuss eco-labelling, both EC and Switzerland stressed the view that both TBT committee and the CTE should work together to take the issue of eco-labelling forward.⁵³ The discussions in the CTE on labelling requirements for environmental purposes show some areas of consensus and several areas of divergence in opinion among WTO Members.⁵⁴ There appears to be consensus that voluntary, participatory, market based and transparent environmental labelling schemes are potentially efficient economic instruments in order to inform consumers about environmentally friendly products. All Members agree on the need for transparency in developing and implementing eco-labelling schemes, so as to avoid causing disadvantage to foreign producers. For developing countries in particular, the recognition of the equivalency of their own certification systems is of particular concern, and resources should be targeted at assisting them to design schemes that support environmental objectives in their own domestic contexts. There is consensus on the importance of the TBT Agreement's Code of

52 This decision was taken following paragraph 51 of the Doha Declaration directing the CTE to ensure that environmental issues are appropriately reflected across all the negotiations.

53 In WT/CTE/W/219, Switzerland stated that (i) the WTO Secretariat should look at and compile definitional aspects around eco-labelling, for instance by referring to work done at the International Organization for Standardization (ISO); and (ii) that the CTE could look at work done in the TBT Committee on specific trade concerns relevant to environmental labelling. The EC submitted a paper to both the TBT Committee and the CTE (WT/CTE/W/212), in which it proposed, *inter alia*, that the two Committees work towards devising guidelines or interpretation of the TBT Agreement with respect to labelling requirements for environmental purposes. Bridges weekly, October 2002, Vol 6, Number 35.

54 Report to the 5th Session of the WTO Ministerial Conference in Cancun, Paragraphs 32 and 33 of the Doha Ministerial Declaration, Committee on Trade and Environment. WT/CTE/8, 11 July 2003.

Good Practice, and members have encouraged acceptance of this Code by bodies developing labelling requirements. Members also drew attention to the TBT Committee's Decision on Principles for the Development of International Standards, which covers environmental labelling standards.

Controversy continues to surround the issue of non-product related PPMs, and their compatibility with the multilateral trading system. Some members question the criteria used for environmental labelling schemes, arguing that they should be based on measurable scientific considerations. Views also diverge on the process of taking forward the discussions on this topic. Some Members are of the opinion that the CTE with its specific mandate on this subject should intensify its work on environmental labelling. The CTE could then input ideas into the debate currently ongoing in the TBT Committee, rather than making the CTE's work conditional on progress in the TBT Committee, given that the TBT Committee does not have a specific mandate on environmental labelling. Others are of the view that the TBT Committee is better suited to the task of assessing WTO rules in respect to labelling since its work already covers environmental labelling.

The European Communities has proposed that, in order to present a suitable recommendation on this issue to the Cancun Ministerial Conference, the CTE should hold three "dedicated sessions" to engage in a positive dialogue on governmental and non governmental voluntary eco-labelling schemes, notably those based on LCA.⁵⁵ The proposal includes a suggestion that all relevant experts, including those providing capacity building

55 A Positive Agenda on Labelling Requirements for Environmental Purposes, Comments from the European Communities on the first draft of JOB (03) 73, Committee on Trade and Environment (CTE Regular). Report of the 5th Session of the WTO Ministerial Conference, JOB (03)/130.

support to developing countries, participate in these “dedicated sessions”.

4. Eco-labelling: Opportunities for Bangladesh

The overriding aim of eco-labelling schemes is to distinguish certain brands of products with less adverse environmental impact than others in their product category. Thus, eco-labelling may be seen as an important tool for gaining access to ‘green’ markets.⁵⁶ For those producers willing and currently or potentially able to meet the sustainability requirements, eco-labelling presents an opportunity to add value to existing products, expand reach in existing markets, or maintain market share in a competitive environment.⁵⁷ Product differentiation could be a way for some exporters in Bangladesh to enhance their export earnings and eco-labels could be one source of such product differentiation. Eco-labelling can also provide an opportunity for innovative producers to benefit from the use of more environmentally friendly production methods.⁵⁸

Eco-labels may potentially enhance the terms of trade of those developing countries able to accurately translate the mood of industrialised country consumers into environmentally friendly

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- 56 FIELD Briefing Paper on ‘Legal and Policy Issues in the Market Access Implications of Labelling for Environmental Purposes’ presented at the Sub-regional Brainstorming Workshop (Asia) on Specific Trade and Environment Issues in Paragraphs 31 and 32 of the Doha Ministerial Declaration in preparation for the Cancun WTO Ministerial Conference (30 July-1 August 2003, Bangkok) at 6.
- 57 See, for example, UNCTAD. 1994. *Eco-Labelling and Market Opportunities for Environmentally Friendly Products*, TD/B/WG.6/2. UNCTAD: Geneva.
- 58 D. Downes and B. Van Dyke. 1998. *Fisheries Conservation and Trade Rules: Ensuring that Trade Law Promotes Sustainable Fisheries*, Centre for International Environmental Law and Greenpeace: Washington, D.C. p.33. <<http://www.ciel.org/Publications/fisheriesconservation.pdf>>

product development.⁵⁹ The potential for growth in the market share of eco-labelled products makes eco-labelling a compelling business choice. For example, if fisheries management improves in response to efforts to comply with certification criteria, the potential benefits to fisheries in both industrial and developing countries could go far beyond higher revenues that eco-labelled products may generate.⁶⁰ Moreover, many governments and industry groups recognise that eco-labelling could provide needed economic incentives for better long term stewardship and availability of natural resources important for national economic welfare.

In addition, eco-labelling schemes can provide countries a tool to help them fulfil commitments made under international agreements on important environmental imperatives such as responsible fishery or forestry and the conservation and sustainable use of biological diversity. There are also hopes that eco-labelling could provide new opportunities for attracting capital investment and joint ventures in developing countries. For example, entrepreneurs may hope to carve out a distinct market niche based on the promotion of the sustainable nature of some artisanal modes of fish harvesting to both socially and environmentally conscious Northern consumers.⁶¹

Although the issue of climate change has not yet affected the public's purchasing habits, the entry into force of the Kyoto Protocol is likely to spark overt policy and market based tools for

59 V. Vitalis, 'Eco-labelling and WTO Rules: What Needs to be Done' in OECD Roundtable on Sustainable Development (January 2001) at 3.

60 C. Deere, *Eco-labelling and Sustainable Fisheries*, IUCN:FAO, 1999.

61 B. Chaytor. 1999. "International Trade and Legal Rules to support Marine Biodiversity", *Fisheries, International Trade and Biodiversity*, draft manuscript, IUCN: Gland.

energy efficiency and conservation in the near future.⁶² This is likely to increase demand for more energy efficient products and services such as greener energy products, building design, or power. Labelling is very likely to play an enormous role as companies explore means to reduce their total greenhouse gas emissions and purchase credit offsets.

Eco-labeling is still new to Bangladesh and the concept is not very familiar to the public or to the business community. In order to make this concept known, issues related to eco-labeling should be disseminated with a view to encourage production and consumption of environmentally-friendly products, raise awareness of environmental protection and relate this to economic benefits of enterprises. Some developing countries, such as India, Malaysia, Singapore and Thailand, have used eco-labels on products that meet recognised environmental standards.⁶³ Though lots of forum discussions have taken account of various aspects of eco-labels, Bangladesh has yet to decide on this issue.

Textiles,⁶⁴ leather products, garments⁶⁵ and shrimp are some of the main export oriented products in Bangladesh and would benefit

62 Supporting Green Markets: Environmental Labelling, Certification and Procurement Schemes in Canada, Mexico and the United States, Commission on Environmental Cooperation (CEC), 1999.

63 http://www.tradeknowledgenetwork.net/pdf/viet_eng.pdf

64 The textile sector of Bangladesh encompasses spinning, weaving, dyeing-washing-finishing. In Bangladesh there are approximately 142 spinning mills (115 in private sector and 27 in govt. sector), 2232 weaving mills and 250 dyeing printing finishing and other mills.

65 About 75% of the country's foreign currency earnings are through export of readymade garment. There are about 2800 garment factories in the country employing 1.5 million workers in the sector mainly women. The yearly export earning of Bangladesh through ready made garment (RMG) is about US \$ 3.8 billion. RMG in Bangladesh is produced mainly by imported fabrics and accessories according to the choice of the overseas buyer. Only

from the eco-labelling schemes. There is a need to keep their present markets or Bangladesh would face higher unemployment and poverty. It risks losing heavily from the final liberalization of trade in textiles and clothing if they are not well prepared for the expected business and market changes. These losses could undermine commitment to the Doha Development Agenda. There is an increasing pressure on the developing countries to adapt eco-labelling requirements as the consumers are gradually making preferences especially while buying clothing and textile products produced in environment friendly condition.

5. Eco-labelling: Concerns and Challenges for Bangladesh

In most case, it is the developed countries who advocate the adoption of eco-labelling.⁶⁶ The EU and Canada, in particular, would like to see PPM eco-labels made legal, and to hold further discussions on the possibility of creating or adopting a set of standards within the WTO for eco-labels. On the other hand, developing countries fear that the labelling scheme may create unnecessary trade restriction, may not be cost-effective and the standard setting process may not be transparent. Moreover, distinctions made on the basis of how much natural resources were consumed in the process of creating a product might unnecessarily bias a consumer against products made in a developing country where that resource is in abundance.⁶⁷

With the growth of labelling programmes, a number of concerns and challenges have risen regarding their operation. There are concerns among some governments and industry groups that eco-labelling schemes could i) disguise underlying intentions to protect domestic industries, ii) restrict market access; and iii)

18 to 20% of the total consumption of fabrics is produced locally in the textile mills.<<http://epbbd.com/month23/ReadyMade.htm>>

66 D. Downes and B. Van Dyke, *op cit.*, at 33.

67 A. Okubo, *op cit.*, at 610.

erode national competitiveness for those less able to meet or afford foreign labelling and certification standards.⁶⁸

The OECD report (2002) expressed several concerns regarding private voluntary eco-labelling. Firstly, 'one size fits all' approaches may ignore differing domestic circumstances. The design of many private voluntary eco-labels frequently fails to take into account the different circumstances prevailing in other producer countries. It does not take account that one PPM may be appropriate in one part of the world, but quite inappropriate in others. Secondly, some of these programmes may have the potential to become a *de facto* market standard against which consumer assess all products. This may penalise not only third country exporters but even competitors from other states. Thirdly, many private voluntary eco-labels are developed with significant inputs from domestic producers and they may have some vested interest in establishing particular standards.

The eco-labelling schemes are often criticized for the failure of their *methodologies* in both criteria-setting and conformity assessment. It is acknowledged that the very nature of the schemes calls for a degree of subjective decision-making at some level.⁶⁹ Trade-related issues such as LCA and PPM information to consumers cause concern. For example, a Blue Angel uses LCA to identify the most important environmental impacts of a product's life cycle.⁷⁰ All aspects of the product, including its method of manufacture, use, length of service life and disposal, as well as all environmental impacts caused by the product, including emission of hazardous substances, energy consumption, water or soil

68 See, D. Downes and B. Van Dyke. 1998. *op. cit.* p.33-36. Also see, C. Deere, *op. cit.*, at 23.

69 See, John Henry, ISO and Eco-Labelling, in *Eco-Labelling and International Trade* 272, 274 (S. Zarrilli *et al.* eds., 1997).

70 See, OECD, (1997) *Eco-labelling: Actual Effects of Selected Programmes* 25, at 26.

contamination and waste are examined to develop the criteria for selection of a recipient.⁷¹ However, criteria which directly address the production stage of a product have rarely been defined.⁷² The reduction and avoidance of environmental damage which occurs at the production stage are left to legislative and regulatory measures.⁷³ Therefore, the programme has been criticized for focusing on only a few isolated environmental impacts that usually occur during the use stage, but ignore the environmental burdens associated with the production process.⁷⁴

It is also argued that there is of lack of *transparency and opportunities for participation* in the development of product standards that might play a role in assessments of sustainability.⁷⁵ The development of the criteria for labelling is mainly done by the country which initiated the program and without any consultation from and participation of potential trading partners. They can be even conceptualized in such a way that competitors from abroad are excluded from participation. This is of particular concern, for example, in the fisheries sector where governments have primary management responsibility for fisheries within national exclusive economic zones. They are obliged under international law to cooperate with governments of other countries in the management of shared fish stocks and of fish stocks on the high seas. Another example is where the Dutch have developed an eco-labelling scheme for cut flowers which considers the environmental effects of international transport. Thus it makes difficult for developing countries to participate in the scheme. Rather than allowing developing countries to benefit from their climatic advantage in

71 A. Okubo, *op. cit.*, at 607.

72 See, OECD, (1997) *op. cit.*, at 26.

73 OECD (1997), at 26.

74 A Okubo, *op. cit.*, at 607.

75 C. Deere, *op. cit.*, at 23

flower production, they risk to be penalized based on their distance to the market.⁷⁶ Effective participation of governments in the product standard setting process may, therefore, contribute to strong implementation of eco-labelling programmes.⁷⁷

There is also a concern that eco-labelling schemes can cause some *discriminatory effects*.⁷⁸ It can be based on domestic environmental priorities and technologies in the importing country and may overlook acceptable products and manufacturing processes in the country of production. The definition of product categories, the determination of criteria may favour domestic over foreign produce.⁷⁹ One example of this is the German textile-labelling scheme, 'the blue angel', which virtually prefers products that use artificial dyes produced in Germany to natural dyes. It may require foreign producers to meet criteria which are not relevant in the country of production and environmental infrastructures may differ widely across countries. Moreover, certain parameters used for calculating the environmental effects of products throughout their life-cycle may be based on information collected in the importing country or countries with comparable conditions, and may overestimate the environmental impacts in the actual country of production.⁸⁰

76 U Grote, 'Environmental and Food Safety Standards and International Trade: Concerns and Challenges for Developing Countries', at 7. Paper presented at the International Symposium Sustaining Food Security and Managing Natural Resources in Southeast Asia - Challenges for the 21st Century (2002, Thailand) http://www.uni-hohenheim.de/symposium2002/pa_full/Full-Pap-S1-3_Grothe.pdf

77 C. Deere, *supra*, at 23.

78 R. Vossenaar, UNCTAD's work on eco-labelling (Brazil, 2000) at 4. Paper presented at the International Seminar on Experiences in Eco-labelling (Sao-Paulo, 10 May 2000).

79 See. C. Deere, *op. cit.*, at 23.

80 See, discussion in R. Vossenaar. 1997. *Eco-Labelling and International Trade: The Main Issues*. in S. Zarrilli, V. Jha & R. Vossenaar (Eds.). 1997.

The *financial cost* of eco-labelling could be quite high as well. It is divided in two parts: the cost of adjusting production processes to ensure that the product will receive the relevant eco-labels and the expense of subscribing to and maintaining participation in an eco-labelling programme.⁸¹ The high cost of certification may negatively affect developing country exporters who are frequently small and medium sized enterprises. There are fears that the costs to comply with the criteria and principles of transnational or foreign eco-labelling schemes, going through the certification process, and maintaining certifiable status could be prohibitive.⁸² As a result, developing countries have emphasised the need for greater financial and technical assistance for any eco-labelling scheme. An example could be GMO labelling. The technology needed to test for genetically modified organisms in food products is very expensive. The market opportunities offered by an eco-label that notes a product is GMO free might, therefore, be more limited in countries without existing testing facilities and in those that depend on low labour and capital costs.⁸³

While voluntary schemes need not result in explicit restrictions as some mandatory schemes might, they may indirectly affect trade due to *institutional factors* in producing countries. Institutional factors could include difficulties faced by producers in some countries in obtaining adequate supplies of materials, environmentally friendly technologies and other materials, which are acceptable for use in, or necessary to comply with standards for, eco-labelled products. Other institutional constraints could be

Eco-Labelling and International Trade, United Nations Conference on Trade and Development (UNCTAD): New York. *supra*

81 Vitalis (2002) 'Private voluntary eco-labels: trade distorting, discriminatory and environmentally disappointing'. Paris: OECD. at 6.

82 C. Deere, *op. cit.*, at 23.

83 Trade and Environment: a handbook (IISD and UNEP) at section 5.4.3. <http://www.iisd.org/trade/handbook/5_4_3.htm>

inadequate and unequal financial and technical capacity within domestic regulatory agencies. Without the support of governments, many private industries cannot reasonably be expected to become sufficiently organised to independently institute effective management schemes and achieve certifiable status.⁸⁴

In addition, the lack of timely and precise information about these standards is also a great obstacle for exports. In this regard, small and medium enterprises (SME) face several problems. While large firms obtain timely and accurate information directly from importers in developed-country markets and various other sources, SMEs tend to depend on secondary sources, basically government sources, often implying considerable time delays. Creating awareness of regulations voluntary labels and eco-friendly technology would require government intervention.

6. Concluding Remarks

The above discussion has identified that there are some unresolved questions especially concerning the treatment of NPR-PPMs in the TBT Agreement. It remains a focus of attention for some developing countries as they believe that voluntary eco-labelling schemes could open the WTO's doors to labour-related issues, human rights issues, and other sensitive social and political concerns. The selected criteria for specific schemes does not have a common range and the eco-labelling schemes do not take into account particular environmental and labour conditions in individual developing countries. Additional problems for developing countries included the lack of an infrastructure for testing, auditing and verification procedures in developing countries. The high cost of the procedures, the lack of technical know-how and the difficulty of controlling the various stages of the life-cycle have also made the export efforts more difficult. The competitiveness may also be affected by higher costs incurred in

84 C. Deere, *op. cit.*, at 24.

compliance with the latest requirements. All these concerns do lead us to believe that there is a need for the international community to speed up its efforts towards resolving these issues.

In the absence of some common international understanding on eco-labelling, governments are required to monitor and improve each individual scheme that arises to ensure the interests of their countries are not compromised. *Internationally agreed guidelines* on eco-labelling could reduce this potential burden of monitoring. Otherwise, there is the possibility that promoters of voluntary competing eco-labelling schemes, for example, at the national level, are likely to seek to discredit the schemes of competitors. There is also a need to strengthen international and regional agreements governing areas such as environment, labour, and human rights, and to create effective enforcement mechanisms.

Moreover, countries should collectively agree to either *harmonize standards* or to live with a negotiated menu of different national standards. Many such agreements, such as the *Codex Alimentarius*, are already in force.⁸⁵ The emergence of a multitude of different approaches to eco-labelling may create trade tensions, which some have argued may be avoided through international harmonisation of eco-labelling schemes, or limited harmonisation at the regional level of the criteria on which several eco-labels are based. However, where no obvious international institution emerges as the candidate under which comprehensive harmonisation may take place, another option may be to encourage bilateral *mutual recognition agreements* between national eco-labelling schemes, starting with those covering the most commonly

85 The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. <<http://www.codexalimentarius.net/>>

labelled products.⁸⁶ There is a need of a comprehensive system for eco-labelling to compete in the world market and boost its economy.⁸⁷ Mutual recognition could involve trading partners accepting each other's established eco-labelling criteria, consequently lowering or eliminating the probability that the criteria would act as a barrier to trade among nations. Other types of mutual recognition might include reciprocal acceptance of credibility or the acceptance by one programme of another's test procedures and facilities.

Options may also be explored for providing WTO compatible support for *research and development and quality assurance* especially for reducing costs of certification of organic producers in developing countries by setting up local certification systems, promoting small-holder certification, and reducing the costs of international accreditation for certification in developing countries.⁸⁸ In this context, there is extreme urgency to develop international mechanisms to develop channels to provide market information and analysis about these products and strengthen capacity-building initiatives.⁸⁹ In addition, voluntary eco-labelling programmes need to consider differing environmental circumstances prevailing in other countries.⁹⁰ Eco-labels such as the Blue Angel or Nordic Swan could take account of differing

86 Green Labels: Consumer Interests and Transatlantic Trade Tensions in Eco-labelling, Consumers International, 1999.

87 <http://www.un.org/Depts/escap/enrm/evs/trade.htm>

88 S Chaturvedi and G Nagpal, WTO and Product-Related Environmental Standards: Emerging Issues and Policy Options January 4, 2003 EPW Special Article. <http://www.international-food-safety.com/docs/epwspecial.doc>

89 *ibid.*

90 OECD Report 2002, at 10. WTO CTE has supported the view that environmental concerns are not the same in all countries, and that the eco-labels developed by different countries need not be based on the same criteria. http://www.wto.org/english/tratop_e/envir_e/cte03_e.htm#ecolabelling

environmental circumstances in developing countries without lowering the environmental standards. For this, some technical assistance and capacity building from developed countries would be required.

Voluntary eco-labelling programmes need to be *transparent, non-discriminatory* and the consumers should have *right to more information*. There is a need to involve developing country input in the drafting of criteria for labelling schemes. Public sector could be more involved in ensuring the veracity of labels and seeking to prevent discriminatory trading practices. Furthermore, maximum transparency in all stages of the labelling process must be assured. Progress on labelling issues is possible only if all sides recognize that legitimate aspirations and concerns are at stake and are prepared to work together towards a compromise that reflects these mutual interests.⁹¹ Deere, in her report,⁹² concluded with a hope that governments, interested industries and civil societies would enter in a fruitful dialogue to make the standards and systems for eco-labelling transparent.

Bangladesh needs to develop a strategic approach on how to tackle the challenges highlighted. A partnership between private and public sector players is critical to develop effective responses. While the government needs to set up an enabling environment, the business sector needs to develop the supply response to market requirements. Together, they need to develop a monitoring system for trade in textiles and clothing that is attuned to the changing economy. Bangladesh would also have to upgrade the national system for testing, certification and laboratory accreditation in order to meet global trade demands. In this regard, it is important to focus on capacity building in the private sector. Another related

91 A. Appleton, Environmental Labelling Schemes: WTO Law and Developing Country Implications. <www.earthscape.org/p3/sag01/P195-222.PDF>

92 C Deere, *supra*, at 32.

aspect is to closely study the emerging pattern of mutual recognition agreements (MRAs) already underway between a few OECD countries.⁹³ The MRAs would start the process of removing duplicative testing and certification requirements in a number of product sectors. Apart from playing its role in the formulation of an international guidelines on eco-labelling, Bangladesh can use eco-labelling as a lever for negotiating better financial and technical assistance as well as improved market access from the developed countries.

93 OECD report on 'Service providers on the move: Mutual Recognition Agreements'. TD/TC/WP(2002)48/FINAL, (11 April 2003)
<[http://www.oalis.org/oalis/2002doc.nsf/LinkTo/td-tc-wp\(2002\)48-final](http://www.oalis.org/oalis/2002doc.nsf/LinkTo/td-tc-wp(2002)48-final)>