

Eco-labelling and the WTO Agreement

Norio FUJIOKA

Summary

1. Eco-labelling programmes aim to improve the environment by raising consumers' awareness of the environmental effects of the products and hence by encouraging their behaviour in favor of relatively environmentally-friendly products. They are no means of import restrictions. But they may have adverse effects on trade if their criteria development processes lack transparency or excessively reflect local environment conditions.

Increasing eco-labelling criteria based on processes and production methods (PPMs) are in the background of trade frictions related to eco-labelling programmes. Exporters may face difficulties, such as substantial additional costs, in meeting the PPMs-based eco-labelling criteria, since the PPMs suppliers prefer may not coincide with those required in the overseas market.

2. Two points are at issue on eco-labelling programmes in the WTO context. One of them is whether eco-labelling programmes based on non-product-related PPMs are covered by the TBT Agreement, and the other is whether they are free from the GATT/WTO disciplines. Generally speaking, developed countries are affirmative on these issues, while developing countries are negative.

(1) TBT Agreement's coverage of eco-labelling programmes based on non-product-related PPMs:

The TBT Agreement covers both technical regulation and standard, and Annexes 1.1 and 1.2 to the Agreement define these technical regulation and standard. It seems clear that eco-labelling programmes based on product-related PPMs are included in these definitions, but it is ambiguous in the text whether these eco-labelling programmes are covered by these definitions. So it is persuasive to argue that eco-labelling programmes based on non-product-related PPMs are not covered by the TBT Agreement in the light of the negotiating history of the Agreement.

(2) The relation between eco-labelling programmes based on non-product-related PPMs and GATT/WTO disciplines :

Articles I : 1, III : 4, and XXIII : 1(b) of the GATT 1994 are relevant to this point. As for Article I : 1, there is a precedent about Tuna/Dolphin case, where the Panel found that the "Dolphin-Safe" eco-labelling programme was not inconsistent with Article I : 1 since "the labelling provisions do not establish requirements that have to be met in order to obtain an advantage from the government. Any advantage which might possibly result from access to these labels depends on the free choice by consumers." But if the government intervention in a programme was more than that in the Tuna/Dolphin case, such a programme can be inconsistent with Article I : 1.

3. Although measures based on PPMs have many problems about the WTO Agreement, voluntary programmes such as eco-labelling programmes can be consistent with the WTO disciplines. Eco-labelling programmes are effective in marketing, and their effect can grow as the consumer's concern about PPMs is increasing. Japanese agriculture, forestry and fisheries which are considered environmentally-friendly may as well utilize eco-labelling programmes for their marketing purposes.