

Environmental/Health Requirements, Market Access and Export Competitiveness – What is the Problem for Developing Countries and what can be the Answers?

Sub-Regional Workshop on Environmental requirements, Market access/entry and Export Competitiveness of Electrical and Electronic Products from China, Philippines and Thailand

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1. Introduction [Pages 2-3]

Since the early 1990s, UNCTAD has consistently undertaken analytical work on examining the relationship between environmental and health requirements [fn] in developed country markets and their effects on market access and market entry[fn] of developing country exports.

...Currently, UNCTAD is implementing the project on “Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues” that assists beneficiary developing countries in national policy-making and co-ordination as well as in their participation in the Doha work programme on trade and environment issues, with special focus on the interface between environmental requirements, market access/entry and export competitiveness.

...UNCTAD also held an Expert Meeting on Environmental Requirements and International Trade (Geneva, 2-4 October 2002). The discussion confirmed that many developing countries are adopting pro-active strategies with a view to strengthening the capacities of producers to respond to health and environmental requirements. In fact several developing countries expressed the need to convert their role from standard taking to standard setting, especially for products for which they are major producers and exporters. [fn]

This article gives an overview of the key findings of the above outlined UNCTAD activities and makes some recommendations on follow-up activities.

3. Problems for Developing Countries – a Question that is Easier to Pose than to Answer

(a) Transparency and market access issues in the context of the WTO (Page 9)

There are two issues that play a key role in implementing the WTO TBT and SPS Agreements. First, there is a real risk that environmental and health requirements can be turned into technical barriers to trade, but how can these be identified as such. This risk arises in a two-fold manner: on the one hand, it might be created in crafting the environmental and health requirements. On the other hand, the risk might arise from the way in which otherwise well-crafted requirements are implemented. [fn]

... As tariff barriers and quantitative restrictions become dismantled in multilateral, regional, sub-regional or bilateral trade liberalization agreements, there is concern that product- and process-related requirements, including environmental and health requirements, are being unwittingly or intentionally used as technical barriers to trade, complicating market access and entry for developing country exporters. This suspicion is being reinforced by the fact that (i) there are only few international standards on environmental requirements; the lion's share of such requirements is set by individual countries, both governments and the private sector; (ii) that such requirements are particularly frequent or stringent in sectors, in which developing countries are internationally competitive, such as agriculture, textiles, clothing, leather and footwear, or electrical and electronic goods; and (iii) that subsidies are provided to developed country companies in various sectors to facilitate adjustment to environmental requirements and that such subsidies are often not subject to WTO disciplines.

How can such requirements however be identified as technical barriers seriously hampering trade, and in particular exports of developing countries?

Neither the TBT nor the SPS Agreement are very helpful in this regard. Article 2.2. of the TBT Agreement contains a non-exhaustive list of *legitimate* objectives, on the basis of which technical regulations can be used. They contain the protection of human health or safety, animal life or health and the environment. Article 2.2. also stipulates that such technical regulations should not be more trade restrictive than necessary to achieve these policy goals. This language is consistent with that in Article XX (on general exceptions) of the GATT 1994.

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The key dilemma is that the TBT, SPS and GATT Agreements do not contain specific benchmarks or criteria for the legitimacy of environmental requirements. In short, a specific environmental requirement is considered appropriate pursuant to TBT Article 2.2. and GATT Article XX, unless a dispute panel decides otherwise. There is, however, a significant difference between the TBT and SPS Agreement: Article 5.1. of the SPS Agreement requires a prior risk assessment to provide evidence of the *necessity* of the measure taken for food safety. Furthermore, Article 5.7. of the SPS Agreement stipulates that in cases where relevant scientific evidence is insufficient, a country may provisionally adopt SPS measures. In such circumstances, however, the country must seek additional information for a more objective assessment of the risk and review its necessity within a reasonable time period.

... Various developing countries are dissatisfied with the legitimacy provisions of the TBT Agreement as regards scientific justification of environmental requirements. It is not rare that the level of stringency diverges between key markets, even among EU member countries. What is more, the level of stringency seems to correlate with the level of protection a particular government wants to give to national producers in specific sectors.⁴⁰
[www.unctad.org/trade_env/test1/meetings/bangkok5.htm]

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Evidence also suggests that there is an increasing number of regulations or standards that are hazard-based rather than risk-based. This approach favors processes and production methods (PPMs) over product characteristics, and the precautionary approach over science-based risk assessment.⁴¹

41 Lawrence A. Kogan, Looking behind the curtain: the growth of trade barriers that ignore sound science, Executive summary of a study prepared for the National Foreign Trade Council in the United States, Washington D.C., May 2003, accessible at: www.nftc.org.