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Introduction

This is the first in a series of papers reviewing policy issues affecting ethical trade in the forest sector. There are two types of ethical trade in the sector: trade in timber from forests certified according to national/international standards, and the various fair trade and conservation driven trade schemes focusing on non-timber forest products.

Policy Watching Brief 1 looks at how the World Trade Organisation and the next round of trade negotiations to be launched at the Ministerial Meeting in Seattle (30 November to 3 December 1999) might affect the trade in timber from certified forests; in particular from forests where Forest Stewardship Council or the ISO 14000 series approaches have been applied.

World Trade Organisation Agenda

The World Trade Organisation looks at forest certification in the context of eco-labelling. This is not a new topic for WTO. The Committee on Technical Barriers to Trade (CTBT) and the Committee on Trade and Environment (CTE) in particular have considered the role of forest certification schemes such as the Forest Stewardship Council (FSC). More recently, APEC countries (Asia Pacific Economic Co-operation) have tried to put forest sector liberalisation measures on the agenda for discussion in the new trade round that will begin at the Seattle meeting. The environmental lobby is concerned this will lead to deforestation.

This paper focuses on two approaches to forest certification: the **process approach** typified by ISO 14000 where forest management bodies largely define the parameters of responsible forest management and then implement them according to procedures set out in the ISO 14000 series; and the **performance approach** typified by the Forest Stewardship Council where the goal, principles and criteria are predetermined.

For the WTO, the key issue is the effect such schemes have on trade. This debate, in common with other trade and environment issues, has been contentious, often dividing Northern and Southern nations. Moreover, as many eco-labelling schemes are voluntary, it raises the issue of the scope of international trade rules. To a large extent, these rules apply at the level of nation states and the public sector, not private companies or non-governmental organisations. Two key topics of debate have been

whether eco-labelling schemes break some of the WTO's rules, and particularly whether they act as a barrier to trade.



WTO members are divided between those pushing for clarification on these issues, those wanting the WTO's scope to be formally extended to cover eco-labels, and those who don't believe this is a matter for the WTO to decide at all.

Social Criteria for Forest Management

The FSC standard for responsible forest management has social as well as ecological criteria. Social criteria have proved even more contentious than environmental ones in international trade negotiations. States have presented sovereignty arguments against the insertion of social clauses in trade agreements, and orthodox economists have argued against international standards for worker welfare. Labour issues, specifically core labour standards, were discussed at the WTO Singapore Ministerial Meeting in December 1996. The consensus from this and subsequent meetings has been to refer labour issues in particular to the International Labour Organisation (ILO) as the competent body in this field. There has been a commitment to greater formal communication between the WTO and the ILO, but critics say that this has been minimal. Whilst the importance of the ILO has been reiterated, there has been no movement in the WTO with regard to linking labour issues to trade policy

Trade Rules and Forest Certification

The legal position of eco-labels and forest certification schemes in trade law is unclear, hence the debate in committees of the WTO. This is for two reasons. First, WTO text dealing with environmental measures does not specify eco-labels and so we must rely on interpretations. Second, the WTO is an agreement between sovereign states whilst many eco-labels are private, voluntary initiatives. WTO trade disciplines are either not relevant for private sector initiatives or are less specific. Moreover, inter-

pretations of WTO rules in relation to trade and the environment are constantly evolving.

For want of a clearer policy framework, the debate on eco-labelling and forest certification has tended to take place as part of the Technical Barriers to Trade Agreement (TBT) and WTO rules on Most Favoured Nation status.

TBT is a set of guidelines that specify the conditions under which WTO members may place restrictions on imports or exports based on product standards and technical regulations. TBT aims to limit the use of technical regulations and product standards to legitimate health, safety, product quality and environmental protection purposes.

TBT makes no explicit reference to eco-labels, but in the last few years the trade impact of eco-labels and their relationship to WTO trade rules have been queried. One concern is whether eco-labels should fall within TBT. If they did, this would lead to regulation of the use of eco-labels.

Most Favoured Nation Status

Under WTO rules, all States have equal status, and any privilege or advantage granted to one member must be granted to all. The WTO limits how far its members can distinguish between goods on the basis of how they are produced. In general terms, it is easier for an importing country to protect consumers than to impose conditions that protect the environment or workers in producing countries.

The WTO is uncomfortable with the way eco-labelling schemes focus on the environmental and social impact of product and processing methods (PPMs), rather than just their consumption effects. Some environmentalists are calling for expansion of the rules to include PPM issues in the producer country, but this position is opposed by most developing countries on the grounds that it would open the door for 'green protectionism' and would severely damage their trade. Orthodox economists support this view saying that to force a country to adopt PPMs without international agreement would lead to an inefficient, and potentially environmentally damaging, allocation of resources.

Some WTO members that support ethical trade schemes are pushing for clarification on the production and processing debate, and the relationship between trade and environment more generally. It is possible that this will be discussed during the Seattle Round. Although it is not definite that revision of the TBT is on the agenda for Seattle, some issues relevant to the

TBT may come in via the back door of the eco-labelling debate.

Liberalisation and the Environment

Liberalisation raises another set of issues for the ethical trade schemes. The relative prices of wood products and the nature of import and export controls inevitably affect the context for sustainable forest management. Environmentalists oppose the liberalisation measures for fear that the removal of trade barriers will hasten deforestation. After all, the removal of trade barriers tends to increase trade and many countries would be keen to take advantage of the lowering of tariffs and non-tariff barriers.

However, the environmental argument against liberalisation in the forest sector is not cut and dried. Removing forest sector subsidies, for instance, may increase the opportunity cost of logging compared to conservation measures, and lead to more efficient use of domestic resources. The last round of WTO trade negotiations (the Uruguay Round) generally reduced wood product tariffs and the extent of tariff escalation was also reduced. But its impact on forest management is as yet unclear, and the effect of further liberalisation on sustainable development still needs to be assessed. Moreover, the relationship between WTO members' obligations on trade liberalisation and their commitments to multilateral environmental agreements such as the Convention on Bio-Diversity is not clear.

Trade and environmental linkages are hotly contested, but they are now a fixture within WTO debate. The same is not true for social and labour issues. The TBT deals with standards and regulations for health, safety, product quality and environmental protection purposes; it does not deal with standards related to working conditions, particularly those unrelated to health and safety. Direct links between trade and labour and other social standards are not permitted under the WTO on the basis that countries should be able to benefit from their comparative advantage in cheap labour etc.

Implications

It is still unclear whether forest certification and indeed eco-labels will be directly affected by changes in the world trade rules. There are three likely scenarios:

- a) the Technical Barriers to Trade Agreement is clarified, recognising forest certification as a 'standard';
- b) special rules are adopted for the design and

implementation of certification schemes; or
c) there is no change.

Forest certification as a 'standard'

The WTO recognises certain international standards, and could extend the TBT to recognise forest certification as a standard. A prerequisite for this would be measures to ensure that private voluntary forest certification schemes were not discriminatory and did not restrict trade.

ISO 14000's process approach does not lay down fixed standards for forest management, and therefore is less likely to infringe WTO rules regarding production and processing methods. FSC in contrast could be seen as being overly prescriptive. Its requirements are often higher than national environmental laws, and WTO might insist on a dumbing down to the minimum required to comply with national laws.

Moreover, the WTO recognises ISO as an international standard-setting body. It is closely associated with the TBT committee and makes formal presentations at TBT meetings. FSC is also a private body, based on non-governmental and business organisations, but does not have the same access within WTO. Limited access to WTO forums and transparency of the decisions made therein is an issue that is receiving increasingly vocal criticism.

The democratic international structure of FSC means that it is unlikely to be criticised for intentional discrimination or trade restrictiveness. Similarly TBT requirements on transparency and verification of standards should not be a problem. However, the democratic process FSC has adopted to identify the principles of responsible forest management have led to the recognition of social criteria. TBT deals with standards and regulations for health, safety, product quality and environmental protection purposes, but not with standards related to working conditions, particularly those unrelated to health and safety. Insistence on recognising the social dimension of forest management could ultimately undermine FSC's position within the WTO context unless strong links between the eco-labelling and social standards lobbies are established.

Harmonised standards

The WTO tends to prefer environmental issues to be dealt with in a simple way that easily translates to the trade policy context. It may be more appropriate, where environmental problems are local, to promote the mutual recogni-

tion of national standards. In the forest sector there are a number of regionally based initiatives to develop criteria and indicators for sustainable forest management, and ultimately certification (e.g. the Montreal and Helsinki processes; collaboration between FSC and the Indonesian Eco-labelling Institute). A further advantage of this harmonisation process is that performance-based approaches are increasingly being merged within a procedural system.

Adoption of special rules

Informal proposals have been made in the Committee on Trade and Environment for the development of a set of guidelines for voluntary eco-labelling schemes. Most recently this has been proposed by Norway under the heading 'Rules of the Road'. Such guidelines would draw on work by the UN Environmental Programme and ISO.

This proposal is by no means generally accepted, but it is possible that should eco-labels be debated in Seattle it will emerge as a compromise solution to the uncertainty that exists and may have parallels with the TBT's Code of Good Practice for standards as already specified under the TBT.

The extension of such a set of rules by the WTO to voluntary initiatives sector may be problematic. First, it would involve nation states imposing a legally-binding code on non-governmental bodies, and this to many observers would undermine the legitimacy of the schemes and be an unpopular and controversial move on the part of governments. Second, as with the previous scenario, the inclusion of forest certification schemes under the auspices of WTO regulations could threaten the survival of certain schemes. NGOs and other private bodies implementing eco-labels would expose themselves potentially to legal challenge if WTO members states considered that the code were breached and trade barriers created.

The drafting of the guidelines would have to be very careful in order to avoid stretching or compressing their meaning as so often happens in a legalistic conflict setting. As with other forms of law, the true meaning of trade law only becomes apparent when interpreted in the context of specific cases.

Another issue regarding drafting, particularly if the ISO model is followed by the TBT, is the level of Southern participation. As a privatised multilateral system, ISO has been criticised for its limited transparency and low levels of representation of developing countries, particularly

development interests.

No change

The most likely scenario is that nothing happens in terms of clarifying the legal position of forest certification schemes; at least for a few years. The nature of the North-South conflict in this matter and the current stalemate in WTO committees suggests that change is only feasible in the context of a formal change in rules, usually only possible in comprehensive Trade Rounds rather than on the basis of consultation or collective approval. The range of opinions opposed to changes regarding PPMs and eco-labels, including the USA, at a point in time so close to the Seattle meeting suggests that change is unlikely, unless it comes in through the back door.

In the business as usual scenario it would prove difficult to get international agreement, and trade law with respect to the environment would continue to be decided on a case by case basis. This is not a satisfactory approach because of its reliance on the identification of violations, complaints being made and then the heavy cost of dispute settlement, both to complainants, defendants and the system. This conflict-based process may potentially weaken the dispute-settlement process and the trade regime itself.

Equity approach

However, one can look at this from another angle, the equity perspective. There may be a case within WTO for a non-binding code of conduct or procedural guidelines for non-governmental initiatives. Such guidelines would use equity concerns as a starting point and would ensure that any eco-labelling initiative:

- Takes into account the needs of the smallest producers;
- Ensures that there is Southern participation in the development of principles;
- Contributes towards the establishment of local certifiers and other measures to en-

sure that resource-poor producers are able to participate in schemes.

These guidelines would be voluntary and non-binding. In the best scenario, private sector voluntary schemes would be instrumental in drawing up such a code because of the need for guidelines and principles to be translated into practice. In the forest sector, private sector investment is outstripping investment by the public sector, while multinational businesses are having increased influence and it is necessary to get them on board as well as community level stakeholders.

The application of voluntary guidelines might reduce the chances of conflict with WTO rules arising from the complaints and disputes procedure, as they would demonstrate that the potential for trade impediments had been kept to a minimum.

Conclusions

Analysis from a trade policy perspective offers no immediate answers to the implications of the international trade policy environment for ethical trade schemes in the forest sector. Even if action is taken to eliminate the uncertainty at Seattle, it is likely that things will remain as they are for some time, with continued suspicions on the part of many Southern countries with regard to the apparent protectionist motives of certification schemes.

The WTO should not prevent the growth of ethical trade so long as steps are taken to ensure that such schemes do not impede trade and are inclusive. Whether the eco-label question is addressed during the Seattle Round depends on the jockeying for position in setting the agenda for these negotiations. If change is on the cards, it will not be implemented for some time to come. In the meantime, however, there are clear arguments for ensuring that eco-labelling schemes, and forest certification schemes restrict trade as little as possible both from a trade policy and equity perspective.

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