

Conclusions

Sub-regional Workshop on Environmental Requirements, Market Access/Entry, and Export Competitiveness of Electrical and Electronic Products from China, Philippines, and Thailand Manila, Philippines, 18-20 February 2004

1. General Conclusions

- Environmental requirements in key export markets for developing countries (DCs) are in general becoming more frequent, stringent and complex. Some trends of environmental/health requirements are very problematic for DC exporters. This concerns the shift in emphasis from “risk management” to “risk minimization” or “risk avoidance”; the rising number of requirements, based on non-product related processes and production methods (PPMs), and the trend towards integrated environmental management that addresses the environmental impact of products along their total life cycle.
- Developing country exporters face some particular challenges: (i) there is a high frequency and stringency of environmental requirements in sectors, where DCs are very competitive (e.g. textiles, leather, fishery products, fruits and vegetables, wood products and IT products); (ii) SMEs play a significant role in these sectors; (iii) DCs often sell standardized mass products or commodities, for which cost increases due to environmental requirements are often difficult to bear; and (iv) there are structural differences between DCs and developed countries, i.e. there is a much higher share of resource- and thus pollution-intensive industries in DCs, which also form the backbone of their exports.
- Environmental requirements also have to be appreciated as potential competitiveness tools. On the one hand, with increasing liberalization of tariffs, environmental requirements have the potential of being turned into versatile non-tariffs barriers (NTBs). On the other hand, they can be an effective tool in the competitive battle of companies with rivals to gain or temporarily maintain a competitive edge. Furthermore, environmental characteristics are increasingly perceived by consumers (both private and corporate) as an integral part of product quality. This is why environmental and health requirements need to be integrated into business strategies of companies and economic strategies of DCs (i.e. eco-positioning as part of brand positioning) to defend and expand international market shares.
- There is still not enough consistent and credible information on the types of problems that exist related to market access. It is therefore important to analyze and conceptualize the key problems.
- In general, there seems to be policy and capacity-building issues that need to be reviewed at three different levels: (i) at national level in developing countries; (ii) at the WTO level; and (iii) at international level outside the WTO framework. Only the policy issues at WTO level and outside the WTO framework appear to fall under current international discussions on market access issues (see annex). A more holistic approach to market-access issues would however require an integrated analysis of policy and capacity-building issues at all three levels, thus including supply-related capacity constraints. Generally, the complexity of intermingling policy and capacity-building measures

requires a strategic and pro-active response by exporting developing countries, rather than a piecemeal, reactive and short-term approach. It also requires active collaboration by governments and business associations in developed countries and a more coherent and co-ordinated approach by donors.

- As outlined in the annex, the elements of such strategic, pro-active approach may, *inter alia*, include:
 - Active use of the WTO TBT and SPS Agreements by DCs to limit undesirable impact of environmental requirements on their export. This includes the discussions on notifications, monitoring implementation of environmental regulation, using S&D provisions and the dispute settlement mechanism. Information provided to the WTO on new environmental regulation must be more fully exploited through the network of TBT/SPS inquiry points. More training of government and private sector officials on information avenues accessible through the TBT/SPS inquiry points will be required.
 - DCs may also review the pros and cons of strengthening the disciplines on “proportionality”, in particular in the TBT Agreement, further reducing the risk that environmental requirements become real barriers to trade.
 - Considering the establishment of information clearing houses on environmental/health requirements at national or sub-regional level and related early warning and quick response systems. It is also important to gather more information on emerging regulations/standards and certification requirements and related stakeholder consultations. All avenues should be explored for active participation therein.
 - Creating or improving systems of adequate national environmental regulation and standards as well as, where considered appropriate, specific standards for export that are similar to environmental requirements in key target markets.
 - Improving the understanding on the use, effectiveness and trade implications of eco-labeling systems and environmental management systems, including supplier environmental management.
 - Actively pursuing avenues of harmonization, technical equivalence and mutual recognition of regulations and standards.
 - Adopting measures of strengthening export competitiveness of enterprises and increasing value added in global supply chains, by encouraging investment in innovation, research and engineering, in particular on cleaner production methods. This often will require an adequate quantity and quality of engineers and designers with sufficient environmental awareness as well as supportive training of company and government staff.
 - DCs should also advocate a better co-ordination of technical assistance and capacity-building activities by foreign donors so that they become more demand-driven.
- There is also the need for strengthening international cooperation. This can include the following measures:
 - Creating international or sub-regional clearing houses on environmental requirements from governments and the private sector. UNCTAD’s initiative on exploring various options in this regard in the context of the planned International Consultative Task Force on Environmental Requirements and Market Access for Developing Countries is a step in the right direction.

- There is room for exploring the creation of regional or sub-regional standards and certification systems.
 - Developing countries need to use far more actively discussions in the TBT and SPS Committees of WTO to preserve or improve export competitiveness. All avenues should be explored to enhance transparency, prolong review periods of notifications and adjustment, and facilitate participation of developing countries in stakeholder consultations related to new technical regulations. Developing countries should also much more actively use the WTO Committee on Trade and Environment to raise concern on environmental measures related to market access, in particular on critical general trends; to operationalize S&D measures; support pro-active adjustment strategies and active involvement in stakeholder consultations related to regulation and standard setting.
 - There is concern among many developing countries that current disciplines on “proportionality” of environmental/health measures, notably in the TBT Agreement, provide too much discretion to governments of importing countries. It may therefore be necessary to explore ways of tightening such disciplines, in particular for cases in which national requirements are significantly more stringent or complex than existing international standards or the majority of prevailing national requirements.
 - UNCTAD’s initiative on creating an International Consultative Task Force on Environmental Requirements and Market Access for Developing Countries, as a project-based activity, was welcome. It could make a concrete contribution to a more systematic and holistic approach on market access; provide a forum for exchange of national experience; facilitate information management on environmental requirements; and become a forum for brain-storming on the issue and for co-ordination of technical assistance and capacity-building activities.
- Participants encouraged further consultation and coordination among government agencies and business associations at national level. Particular attention should be paid to SMEs, in the light of their importance for employment creation and export potential.
 - DCs need further international funding and technical support for establishing and improving information networks on environmental requirements, analyze salient international trends in such requirements with a view to facilitate pro-active adjustment, improve active participation in pre-regulation- and pre-standard-setting stakeholder consultations in developed countries, support training on eco-design and environmental management, and improve national networking among concerned government and private sector bodies.

2. Specific Conclusions on the Electrical and Electronic Industry

- Depending on the regional structure of export, the role of subsidiaries of globally operating TNCs and large contract manufacturers in the economy and the involvement of SMEs in their supply chains, the adjustment process to environmental requirements in key export markets tends to take different forms in DCs. DC governments need to provide particular support to adjustment efforts of SMEs and medium-sized national companies.

- Awareness on environmental requirements in export markets is highest among large companies (i.e. subsidiaries of big international companies and contract manufacturers) and lowest among SMEs. National industry associations, supported by governments and NGOs need to play a key role in awareness-raising.
- The pace setters for environmental requirements are the European and the Japanese market. These requirements are however likely to become of global significance in the foreseeable future.
- DCs make insufficient use of national product standards to meet environmental requirements in export markets. There are too few standards and it takes far too long to develop and adjust them. Opportunities arising from the crafting of export standards, which go in tandem with requirements in key export markets, are also hardly appreciated.
- From a conceptual point of view, adjustment measures at national level in DCs fall into (i) measures that deal with environmental requirements in key export markets and related market access/entry; and (ii) measures that deal with domestic management of post-consumer IT and electrical waste. However, there is some interaction between these two issues, notably when adjusting to the RoHS Directive and in promoting eco-design.

Adjustment related to market access requirements

- For exported electrical products, notably household appliances such as refrigerators and washing machines, a key requirement is the meeting of energy efficiency standards in target markets. Appropriate national or export standards or the use of energy efficiency eco-labelling schemes will be helpful in encouraging adjustment to the requirements in export markets.
- Apart from eco-design for recycling (further elaborated below) there is not much what DC exporters can do about the WEEE Directive of the EU and mandatory recycling requirements in Japan. Exporters will be charged by collection and recycling systems set up in the target countries. Exporters should however pay heed to the fact that the thus charged fees are competitive and not resulting from artificial cartels.
- The RoHS Directive of the EU is the most problematic requirement for DCs to meet in the next few years. This will require changes in production processes to outphase heavy metal use. There are also some other regulatory requirements that deserve close attention in the near future, such as the strategy for a future chemicals policy, integrated product policy, and the draft directive on eco-design of end use products (EuP), all in the European Union.
- There is the need for implementing a comprehensive eco-design training programme for product developers and process engineers. This needs to focus on the gradual elimination of heavy metals and other problematic substances, such as PVC, as well as on design that minimizes waste generation and facilitates re-use or recycling of end-of-life products (The Surrey Institute of Art and Design, for instance, already offers a comprehensive eco-design training programme, see: www.cfsd.org.uk). The eco-design training programmes should target product designers, 'design' engineers and process engineers.

- DC governments should also encourage the more widespread use of national eco-labelling programmes and environmental management systems, including supplier environmental management. Business-to-business partnerships and green purchasing initiatives might also play a useful role. All these initiatives do not directly improve market access, but might facilitate the meeting of voluntary standards in export markets, ease the introduction of eco-design and enhance material efficiency.
- Key exporting DCs missed the opportunity to articulate their concern in WTO discussions on the WEEE and RoHS notification as well as in stakeholder consultations organized by the European Commission. It is important to draw swift lessons from this case in order to avoid its repetition in the above-mentioned upcoming legislative projects in Europe, which need in-depth analysis of their potential market access effects and impact on DC exports “before” legislation is finally crafted.
- UNCTAD will organize a meeting with EU officials in Brussels in the context of the project to discuss some key preliminary findings of the country-case studies. This might provide an opportunity for seeking clarification on the objective and the results of a currently prepared study by the European Commission on the impact of the WEEE and RoHS Directives on key IT exporters in East and South-East Asia. The meeting might also offer the opportunity to seek clarification from EC officials on the extension of adjustment periods to the RoHS Directive.

National management of post-consumer IT waste

- In the next few years, governments in DCs need to pay particular attention to develop well-adapted and customized take-back, collection, re-use and recycling systems for post-consumer electrical and electronic waste. These systems must reflect the special circumstances of DCs and fully utilize existing mechanisms of collection and recycling, notably by SMEs in the informal sector. There should be public-private partnerships on developing markets for reconditioned parts and recycled materials.
- Thailand's experience suggests that there is merit in combining the adjustment to requirements on recyclability of materials in external markets with practical steps to set up a domestic collection and recycling system of post-consumer electrical and electronic waste. This "all-in-one" approach is undoubtedly more complex and time-consuming, but long-term synergies and economic and environmental gains militate in favour of such approach.
- Already high and rising legal and illegal imports of IT waste and second-hand IT equipment are a serious issue of concern in all three countries. Thailand's and China's recent legislative measures on banning the import of IT waste were noted with interest. Thailand has also limited the import of second-hand equipment, by reducing the range of permitted products and their maximum age. Thailand's experience suggests that regulatory measures need to be flexible to reflect continuously changing trends in imports of IT waste and second-hand equipment, on the one hand, and to not unnecessarily discriminate material recovery, recycling and re-use industries, on the other hand.
- Transparency on legal and commercial issues related to imports of second-hand IT equipment needs to be improved. There is a need for clearer definitions of such equipment, its capture in international trade statistics (i.e. through the creation of specific

product groups) and clarification of the status of such equipment under the Basel Convention. It was suggested that the Basel Convention and the UNCTAD secretariats should consider organizing a workshop for interested developing countries in Asia discussing transparency issues and providing the opportunity for a more in-depth exchange of country experience on regulating imports of second-hand IT equipment and IT waste.

- It was also proposed that DCs may raise the issue of exports of IT waste and second-hand IT equipment at the CTE under the work programme item on domestically prohibited goods, because a restriction of such trade at the point of export in developed countries would be one of the most effective policy measures for regulating and, if necessary, restricting such exports to DCs. Similar discussions may be launched in the context of the Basel Convention.

ANNEX

Conceptualization of Market Access Issues – Clustering Policy and Capacity Issues at Various Intervention Levels

At national level in developing countries

Policy Issues

- Maximizing benefits/minimizing costs of adjustment to external environmental/health requirements and managing the associated adjustment process
- Develop national or export standards that are close to requirements in export markets
- Use of (mandatory) eco-labelling schemes
- Effective domestic coordination and cooperation, including with local governments, and with non-governmental parties

Capacity Issues

- Enhance response and supply capacity
- Make effort or assist on information gathering
- Provide opportunities for training and exchange of experience (between companies).
- Use of (voluntary) eco-labelling and environmental management schemes.

At WTO level

Policy Issues

- Are current disciplines on “proportionality” of a TBT measure sufficient?
- Effective use of existing WTO mechanisms to limit undesirable impact:
 - notification discussions;
 - monitoring implementation;
 - using S&D provisions;
 - using DSB.
- Review of good regulatory practice and transparency procedures² (e.g. information on and possibility for participating in pre-regulation-setting consultations)

Capacity Issues

- Using WTO as a source of information and breathe full life into TBT/SPS inquiry points
- Active participation in pre-regulation-setting consultations¹

At international level, outside the WTO

Policy Issues

- Lack of international standards, harmonization/ equivalence of national standards and mutual recognition of inspection and conformity assessment results
- Avoiding a situation, in which voluntary standards
- Become significant TBTs and market entry hurdles
- Obtaining permission to participate in pre-standard-setting consultations.

Capacity Issues

- Information gathering and dissemination
- Review of trends in environmental/health requirements in international markets
- Active participation in pre-standard-setting consultations

¹ The difference between policy and capacity issues at WTO level is not entirely clear-cut. The desire to tighten disciplines on the implementation of some specific TBT and SPS provisions might lead to policy decisions (e.g. on seeking or assuring active participation of exporters in developing countries that might be particularly impacted by a specific environmental/health requirement in pre-regulation-setting consultations) that address or overcome lack of capacity.

² The Third Triennial Review of the Operation and Implementation of the TBT Agreement (WTO document G/TBT/13 of 11 November 2003) has made quite a number of recommendations on good regulatory practice and on enhancing transparency procedures.