



ENVIRONMENT VS TRADE-STUDY ON ECO-LABELLING

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ABSTRACT

In global era where trade liberalization requires free mobilization of goods and services as well as investment between countries with eradication of technical barriers on trade, there is a question if free trade can accommodate on the same level of environmental interests, particularly for developing countries which face huge economic gap with the developed countries. Most of developing countries dominate global exports in goods. It is an advantage for the countries to derive state income but at the same time they are also exposed to the big environmental damage potentials because of the trade in natural resources. Correlation between economic activities (trade) and environmental protection has been drawing global attention, as environmental issues usually emerges from the economic activities and becomes a victim of it as well. This paper will describe the eco-label and its implementation in Indonesia, and the role of eco-label through environmental and international trade. In conclusion, eco-labelling program have the potential to be misused as technical barriers to trade and provided developing countries must be concern with the market access of their exports into developed countries and most importantly, the vast difference between the environmental concerns of various countries should be recognized then the use of eco-labels for constraining potentially hazardous behavior to environment inevitably get constrained..

Keywords: eco-label; economic; environment; trade.

INTRODUCTION

We live in an age of increasing interdependence and increasing inequality, environmental and economic interdependence increasingly requires sophisticated approaches to international cooperation. As the pace of economic change has increased, so has global environmental degradation¹.

Economic interest of a country is the main reason behind the trade relations the countries

in the world has develop, while there is also an interest for gaining independence and control over international economy that leads to sort of awareness that trading would be the only way to develop the economy of a country.²

Any efforts to fulfill the interests and the economic development bring impact to the country, particularly relating to the environmental condition. The natural resources are available for a country's economic use. Yet on the other hand, there is a little understanding how limited the natural resources are. More

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¹ Bradley J. Cordon, *Environmental Sovereignty and The WTO-Trade Sanctions and International Law*, United States of America, Transnational Publishers, Inc, 2006, pg. xi.

² Adolf Huala, *Hukum Perdagangan Internasional*, Jakarta: Raja Grafindo Persada, 2006, pg. 19.

than a quarter of the trade in goods is sourced from the natural resources which serve as the pillars of the global economy³. Thus, at the end we can see that trade and environment cannot stay in the same way. Or in other words, environment is at the center of a battlefield where trading activities are done to fulfill the economic interests.

Environmental problems are increasingly imminent in the global economy as they can cause conflict of economy. Erosion and degradation that destroy our environment are partly impacts of economic activities (including trading) and uncontrollable economic development. The way of life (lifestyle) and greediness in fulfilling the economic interests had also contribute to these problems. The economic paradigm is mostly value-centered and ignores physical dimension such as environment, where welfare measured on value base is indeed a vital part of the existing physical dimension. Both value and physical dimension do affect each other⁴.

Arguments about fulfilling economic interest through trade and environmental have started back in 1970s, as indicated by the issuance of international trade and environmental law, that was, the issuance of Convention on International Trade in Endangered Species of Wild Fauna and Flora/ CITES). The issuance of the convention was intended for protecting endangered species of the wild flora and fauna from uncontrolled exploitation by regulating or prohibiting international trade in endangered species of

flora and fauna and reduce their economic values⁵. Then in Stockholm, Sweden, in 1972, Declaration of the United Nations Conference on the Human Environment was established and marked as a world history in global care for environment. Far beyond those years, global care for environment was shown in international agreements for natural resource protection which unfortunately could not be renewed in the interest of economy, and not for in the interest of ecology⁶. As environmental problems rise worldwide, the arguments about environmental impacts due to economic interest narrows to the anxiety of the environmental damages caused by free trade and the anxiety of the environmental policy to bring adverse impacts on the trade.

In global era where trade liberalization requires free mobilization of goods and services as well as investment between countries with eradication of technical barriers on trade, there is a question if free trade can accommodate on the same level of environmental interests, particularly for developing countries which face huge economic gap with the developed countries. Most of developing countries dominate global exports in goods. It is an advantage for the countries to derive state income but at the same time they are also exposed to the big environmental damage potentials because of the trade in natural resources⁷.

Marrakesh Protocol to GATT 1994 concluded 3 (three) important requirements about environment and trade, namely: (1) when drafting environmental regulations

³ Anna Yulia Hartati, *Lingkungan Hidup dan Liberalisasi Perdagangan: Upaya Mencari Jalan Tengah*, *Jurnal Ilmu Sosial dan Politik*, Vol. 11 No. 2, FISIP UGM, 2007, pg. 194.

⁴ Surna Tjahja Djajadiningrat, Yeni Hendriani dan Melia Famiola, *Green Economy (Ekonomi Hijau)*, Bandung: Rekayasa Sains, 2014, pg. 4.

⁵ Sukanda Husin, *Hukum Lingkungan Internasional*, Jakarta: Rajawali Press, 2016, pg. 149.

⁶ Bradley J. Cordon, *Op.Cit*, pg. 1.

⁷ Anna Yulia Hartati, *Loc.Cit*.

which can influence trade and development it shall consider the scientific justifications and support to regulations and implement transparency; (2) The regulations shall be non-discriminate; (3) It should use as much as possible international standard.

Referring to the requirements, the third requirement in particular, concluded an international standard for environment in 1993 called Environment Management System (EMS), which was marked by the issuance of ISO 14000 series certification effective as of 1996. Following the standard issuance, there is an importance to ensure the effectiveness of the regulation in facilitating the environmental use in trade in order to improve productivity, empower production, as well as improve quality of goods and services.⁸

The concept of Environment Management System was introduced to address difference in environmental standard relating to free trade. Therefore it was expected to help address barriers due to standard differences in WTO (World Trade Organization) member countries and to bring harmony in environment. One of the instruments in EMS of ISO 14000 series is the product standard called Eco-labelling⁹.

This paperwork is presented with aim to discuss the correlation between international trade and environment using the eco-labelling as the instrument, and there is no intension to propose this paperwork as a comprehensive review. To be specific, through this writing, and also will present how eco-labelling as

an instrument of environment management system can contribute to the environment without causing loss to the trade and not be treated as a trade barrier. To answer this question, the paperwork will present eco-labelling as an instrument for protecting environment in international trade.

The paperwork is composed of several parts. After the Part of Introduction (Part A), Discussion Part (Part B) will be composed of 2 (two) parts, namely: B.1 will discuss the correlation between the international trade and environment, in which it will also present the theories or concepts of international trade and environment, including sustainable development concept. Then, Part B.2 will be composed of 2 (two) parts: part a will explain the general concept of eco-labelling while part b will explain the execution of eco-labelling program in Indonesia. Part B.3 will discuss about the correlation of eco-labelling as instrument for protecting environment in international trade while Part C, which is the last part, contains conclusion of the paperwork.

DISCUSSION

1. International Trade and Environment

Years ago, as stated in the Stockholm Conference document titled: *"The Control of Industrial Pollution and International Trade"* which led to the General Agreement of Tariff and Trade (GATT) to review the international trade policy. At that time, GATT was the vocal point for industrial countries to build a trade relation at lower tariffs¹⁰.

⁸ Destyane Pristanti Putri et al, Alasan Indonesia Melaksanakan Program Ekolabel, *Journal of Social and Political Science*, Vol.2 Edisi 1 January-April 2015, FISIP Universitas Jember, pg. 32.

⁹ Nur Sulistyo B. Ambarini, *Perjanjian Kerjasama Sertifikasi Penerapan Standar Internasional Sistem Manajemen Lingkungan (SML) ISO 14001 Sebagai Perwujudan Transformasi Global Dalam Hukum Ekonomi*, Bandar Lampung: Universitas Lampung, 2012, pg. 329-330.

¹⁰ Kristianto Pustaha Halomoan, *Prinsip Pembangunan Berkelanjutan Pada Pemanfaatan Sumber Daya Mineral Dalam Kerangka Pengaturan WTO*, Bandung: Fakultas Hukum Universitas Padjajaran, 2015, pg. 4.

Since 1971, correlation between environment and international trade has been one of GATT's concerns, and to further review it, Group on Environmental Measures and International Trade was established. However though, since its establishment, the group did not show any activities. Around 1990s, there was an initiative to revive the group with the main duty to review the correlation between the international trade and environment, particularly the correlation among rules containing trade restrictive and prohibition in international agreements on environment with impacts on international trading activities, on the implementation of packaging standard, and eco-label on international trade¹¹.

In the next two decades, Earth Summit in Rio de Janeiro, Brazil, in 1992 brought back the environmental issue on the table, thus making clear explanation on the correlation between environment and trade economy as it discussed the non-tariff barriers in trade as the controlling instrument over the exports causing damages to the environment¹². In addition, the Summit also resulted in Agenda 21 that contained action programs on environment and international trade, concluding that:

“Environment and trade policies should be mutually supportive. An open, multilateral trading system makes possible a more efficient allocation and use of resources and thereby contributes to an increase in production and incomes and to lessening demands on the

environment. It thus provides additional resources needed for economic growth and development and improved environmental protection. A sound environment, on the other hand, provides the ecological and other resources needed to sustain growth and underpin a continuing expansion of trade. An open, multilateral trading system, supported by the adoption of sound environmental policies, would have a positive impact on the environment and contribute to sustainable development.¹³ ”(United Nations-Sustainable Development)

Realizing that the establishment of such institution failed to provide proper protection over the environment, United Nations then established World Commission on Environment and Development (WCED) or Bruntland Commission. A special task force with main duty to review environmental problems. The commission presented a special report titled “*Our Common Future*”. In the report, the term of sustainable development was introduced for the first time as a significant element in the natural and environmental conversation efforts. The Commission noted that a sustainable development is a development model that strives for economic interests of today generation without degrading the capability of future generation in fulfilling their needs¹⁴.

The international trade emerges due to the difference between countries, in terms of production and open economic system

¹¹ Syamsul Ma'arif, *WTO Sebagai Organisasi Perdagangan Plus Lingkungan Hidup?*, Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2001, pg. 155.

¹² G. Carolina Hernandez & Gill Wilkins, *Population, Food Energy and The Environment: Challenges to Asia-Europe Cooperation*, Philippines, Council for Asia-Europe Cooperation, 2000, pg. 366.

¹³ www.sustainabledevelopment.un.org, *Agenda 21 United Nations Conference on Environment & Development*, Rio de Janeiro, Brazil, 3-14 June 1994.

¹⁴ Arin Fithriani, *Isu Lingkungan Hidup: Potensi Ancaman Perdagangan Internasional Negara Berkembang*, *Jurnal Ekonomi Bisnis*, Universitas Tarumanagara, 2006, pg. 87.

of the countries¹⁵. Production here refers to assets, technology, natural resources and human resources. As seen in the trade relation between developed countries and developing countries, a significant difference lies on natural resources. International trade using the natural resources as the main object is required to respect the sustainability aspect of the natural resources as it shall achieve the balance in economic growth through trade and environmental conservation efforts. The balance results in a sustainable globalization that requires right and efficient implementation of sustainable development principles. To sustain the efforts, some elements are required to prevent the failed sustainable globalization: (a) adverse impacts of trade practices on environmental and social aspects shall be measured; (c) the importance of the environmental policy and efficient sustainable development policy; (d) the proportional treatments for developing countries; (e) effective cooperation between WTO and other multilateral institutions; and (f) the expansion of investment and trade division in WTO¹⁶.

The international trade advances do not always bring positive results. In fact, at many times, the environment somehow becomes the victim while dealing with the commercial advantages of international trade practices. The trade and environmental issue can be reviewed from several perspectives, such as: (1) international trade affects the domestic environment of a country; (2) international trade affects cross-border ecology of a country; (3) relation between international trade and common interests¹⁷.

Correlation between economic activities (trade) and environmental protection has been drawing global attention, as environmental issues usually emerges from the economic activities and becomes a victim of it as well. A country's reaction to bridge the trading policy with environmental issue can be viewed from the following theories¹⁸:

a. *Playing Field Theory*

The theory says that it is unfair to implement same rules on the goods or commodities of a country, in which the externality cost (the environmental cost) counted against the goods or commodities of other countries that do not charge similar levy has been included in the price of each unit. Therefore, we shall tolerate different treatment, and a state policy to apply different treatments in the forms of embargo or limitation to sustain environmental condition shall be acceptable.

b. *Control Mechanism of Market System*

The theory says that the use of trading instruments, such as embargo or other forms of trade barriers are acceptable since market-system based policy, such as import tax, is not always effective to control demand for goods in the market. One example of the theory implementations was when Japan and Hong Kong reinforced import ban policy for ivory and its derivative products that were classified as luxurious goods from African countries following the two countries decision to rectify CITES. This somehow proves that the enactment of the trade barriers such as import ban is more effective to prevent

¹⁵ Destyane Pristanti Putri et al, *Op.Cit*, pg. 34.

¹⁶ Kristianto Pustaha Halomoan, *Op.Cit*, pg. 31-32.

¹⁷ Jane Holder & Maria Lee, *Environmental Protection: Law and Policy*, New York: Cambridge University Press, pg. 270.

¹⁸ Syamsul Ma'arif, *Op.Cit*, pg. 138-139.

environmental damages rather than the implementation of economic instruments, such as import tax.

c. State Sovereignty Theory

It is in every right of a sovereign country to utilize the natural resources as their needs, including the right to control the export and import activities in regard to environmental issue. On the other hand, every country secures a right to put limitation or export ban on a commodity if the activity will only bring adverse impact on the environment. Also, a country deserves to control all imported commodities if the imports are believed to be able to cause damages to the environment of a country.

According to Erman Rajagukguk¹⁹, to be able to understand the relation between economic development through the execution of trading activities and government act to protect to the environment, we shall first differentiate the rule of production such as rule of food residuals, tax over fuel leakage, rule of product liability, recycle rule, with rules of production process, such as rule of water pollution, rule of ex-mining area reclamation, rule of hazardous waste. The difference is imminent since it will explain how tight those rules are reinforced in a country. Still, in the implementation, it is easier for countries to introduce harmonization to regulations on production rather than regulations on production process.

A country that tightly reinforces the rule of production will be able to avoid the

international competition, which can cause damage to its domestic industry, by ruling the sales ban over imported goods that prove to fail to obey the applying rules, and it also applies to domestic production and imported products. For instance, German producers complained with Denmark's tin recycle policy, making German producers uncompetitive with Denmark's beers at Denmark's market. Then relating to the green production requirement and the utilization of technology for a country that applies tight regulation allows the establishment of comparative advantages for domestic industry by giving incentives to develop green technology. We can look at the dispute involving United States of America (USA) and European Community as an instance, in which USA was banned from importing wine from Europe due to the pesticide residuals, while European Community banned import of US meat as US meat was suspected to have received hormonal injection that could harm human health²⁰. The above dispute shows the arguments about the different implementation of production rules among countries. Such arguments are somehow unavoidable following the differences in environmental, social and economic conditions in the countries, thus such harmonization on production rules is very much expected. However, the environmentalists have concerned that the harmonization on production rules will weaken the implementation of regulation of production in the countries where they reinforce tight manufacturing standard, and will bring adverse impact

¹⁹ Erman Rajagukguk Rajagukguk, *Perlindungan Lingkungan Hidup Dari Sudut Kepentingan Bisnis*, Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2001, pg. 304-305.

²⁰ Richard B. Steward, Environmental Regulation and International Competitiveness, New Haven, *The Yale Journal*, Vol. 102, 1993, pg. 2043.

on the environmental protection efforts; in the meantime, producers and developing countries fail to comply with the tight rule on production. Different from the rule of production process, countries with tight rule on production process can prevent their industries to suffer from comparative disadvantages through the establishment of international agreement on same standards, and different treatment to regulation on production process among nations will not hamper the trade²¹.

As previously explained, commitment to balance the international trade practices with the environmental protection efforts has to deal with the interests of each nation. This was due to the difference of interests between developed nations and developing nations. Yet, there are critical judgements toward the environment-relating international trade system²²:

- a. Without environmental protection, global trade can cause damages to the environment since it seeks to accelerate the economic growth which unfortunately leads to overconsumption of natural resources and overproduction of waste;
- b. The regulation on trade liberalization often results in the regulation of market access which exceeds the importance of the regulation of environmental protection;
- c. Trade barriers shall be treated as instrument for promoting environmental protection worldwide,

particularly in relation to the cross-border environmental damages and for enacting the international law on environment;

- d. If environmental damages take place but are not spread to other countries, countries with strong environmental standards will have competitive advantage in global market, thus giving pressure to the countries with high environmental standards regarding the complexity in their environmental standards.

2. Eco-label and Its Implementation in Indonesia

a. General Overview

On trade issue, we shall understand that marketing is an activity that is intended to persuade consumers of certain segments to buy the goods or service offered. With the global environmental condition continues to drop, climate change becomes a main concern, driving a change in consumer demand for a product, which initially shall be good in quality and competitive in price, to require also environmental-friendly aspect.²³ One strategy to protect the environment from trade issue is to implement eco-labelling certification. Eco-labelling is different from green symbol or factory or service provider claims, saying that eco-labelling is given by the independent parties relating to products or services that are said to fulfill the eco-labelling criteria.²⁴

The term of eco-labelling emerged at the implementation of Marrakesh Agreement in

²¹ Erman Rajagukguk, *Op.Cit*, pg. 307.

²² Aisia Arrifianthy Fauzi, *Aplikasi Upaya Perlindungan Lingkungan Hidup Dalam Hukum Organisasi Perdagangan Dunia (WTO) Berdasarkan Pengaturannya Dalam Agreement on Technical Barriers to Trade (TBT Agreement) dan General Agreement on Tariffs and Trade (GATT)*, Depok: Fakultas Hukum Universitas Indonesia, 2013, pg. 7.

²³ Suminto, *Kajian Penerapan Ekolabel Produk di Indonesia*, *Jurnal Standarisasi*, Vol. 13 No.3 Tahun 2011, pg. 202

²⁴ Sustainable Business Associates, *Environmental Labelling*, Swiss, Sustainable Business Associates, 2006, pg. 6.

1994 through the release of proposal document about International Standard Organization (ISO). Such organization later introduced the standardization system in environment called Environmental Management or ISO 14000 that consisted of 5 (five) standard areas²⁵: 1) environmental management system; 2) environmental performance evaluation; 3) environmental auditing; 4) life cycle assessment; and 5) environmental labelling.

Environmental Labelling can be measured using market-based management approach. This approach introduces market-based environmental management with respect to the efforts on how to fulfill the demand for clean and healthy environment (fulling demand), and how to create demand through the strengthening of competition bases (creating demand), strategy on how to compete and where to compete to reach a sustainable competitive advantage.²⁶

On fundamental basis, eco-labelling is a certification. Therefore, it expects a high access to market or competition, and although eco-labelling does not represent the product standard in relation to product pricing, but eco-labelling can affect it. Eco-labelling is a standard used to penetrate into the global market through international trade in order to address the critical judgements from international consumers and countries with concern on environmental issue.²⁷ This phenomenon emerges from the rise of global green campaign. The tendency affects much

of the behavior and consumption of global community and at the end, affect the demand for goods and services at global market. Consumer demand for environmental-friendly products rises. A product is determined to be environmental-friendly if the process for getting the raw materials for making the product until the product waste will not cause damages to the environment.²⁸

Global Eco-Labeling Network (GEN)²⁹ defines eco-label as a label which identifies overall environmental preference of a product (good and service) within a product category based on life cycle considerations. Meanwhile, eco-labelling serves as one type of eco-labelling that particularly provides the consumers with insights about the relation of the environment in a product. Organizations for Economic Co-operation and Development (OECD) defines eco-labelling as 'voluntary' granting of labels by a private or public body in order to inform consumers and thereby promote consumer products which are determined to be environmentally more friendly than other functionally and competitively similar products'³⁰. The definition of eco-labelling by OECD is similar to the one made by other institutions such as United Nations Conference on Trade and Development (UNCTAD) and GATT, which briefly defines eco-labelling as an effort to utilize market power to extend appreciation to the environmental-responsible behaviors.³¹

²⁵ Angling Galih Cahaya Widiyanto, *Legal Status of Eco-labelling in The Perspective of World Trade Organization (WTO) Agreement*, Yogyakarta: Fakultas Hukum UGM, 2016, pg. 3.

²⁶ Tommy Hendra Purwaka, *Instrumentasi dan Standarisasi Kebijakan Lingkungan Hidup*, Jakarta: Penerbit Universitas Atma Jaya, 2010, pg. 64.

²⁷ Arifin Arief, *Hutan dan Kehutanan*, Yogyakarta: Kanisius, 2001, pg.165.

²⁸ Elisabeth Yulianti, *Ekolabeling Sebagai Upaya Menghasilkan Produk Yang Berwawasan Lingkungan*, Semarang: Universitas Diponegoro, 2003, pg. 93.

²⁹ www.globaleco-labelling.net, Introduction to Eco-labelling, Information Paper, July 2004.

³⁰ Simi T. B, *Eco-labels: Trade Barriers or Trade Facilitators*, India, CUTS Centre for International Trade, Economics & Environment/CUTS CITEE, 2009, pg. 1.

³¹ *Ibid.*

Putting eco-labelling in the framework of natural resource preservation shall refer to 3 (three) main criteria:³² 1) production sustainability; 2) ecological sustainability; and 3) socio-cultural sustainability. The important issue of eco-labelling is the availability of accurate, verifiable and clear information to explain the environmental aspect of a product (goods or service) process, components and packaging to help consumer choose the environmental-friendly products. Therefore, the information delivery can affect the consumer behavior, particularly consumers with good understanding of the importance of the environment. The information is given with aim at driving demand and increase offers for environmental-friendly products at the market, thus supporting the sustainable environmental preservation³³. For instance, a furniture product certified with eco-label means that the furniture manufacturer wants to prove the wooden material used to make the product is derived from sustainably managed forestry unit (UMH).

The basic principle of eco-labelling is *voluntary*, meaning that the businessman or the manufacturer can be a member or an international standard organization, resulting in a consequence for the manufacturer or businessman toward his/her products. However, there are countries that strictly require (mandatory) the eco-labelling application, such as USA as stated in the US mandatory battery labelling and energy guide labels. According to Emil Salim, eco-labelling certification must refer to 2 (two) principles³⁴:

First, the eco-labelling certification is voluntary, namely in accordance to market-based approach, meaning that eco-labelling certification must not be part of responsibility to the government and the initiative shall come from the businessman or the management of the related parties, with regard to the efforts to fulfill consumer demand. *Second*, the certification process is done by an independent third party.

Referring to the review results based on many paper works and analysis, Simi wrote some of goals of eco-labelling scheme³⁵:

- a. Protect the environment and at the same encourage sustainable management and consumption of resources;
- b. Create awareness among consumers regarding the environmental effects of a product that is to be consumed;
- c. Offer incentive to manufacturers and importers for reducing adverse environmental impact of products;
- d. Enhance environmental standards of the commodity and at the same time encourage environmentally sound innovation;
- e. Give such manufacturers a competitive advantage over other manufacturers.

In brief, the eco-labelling aims at executing an effort that is very important and genuine for the environmental protection and preservation, which shares responsibility to promote sustainable production and consumption patterns.

³² Sri Rahayu Oktoberina, *Upaya Perlindungan Lingkungan Hidup Dalam Era Perdagangan Bebas*, Bandung: Citra Aditya Bakti, 2003, pg. 433.

³³ Kiki Puspita Mayasari, *Peran GATT/WTO Terhadap Isu Lingkungan Hidup Melalui Ekolabel Dalam Perdagangan Internasional*, Medan: Fakultas Hukum USU, 2009), pg. 43.

³⁴ Emil Salim, *Sertifikasi Ekolabel: Antara Kelestarian Hutan dan Perdagangan Internasional*, Kompas, Senin, 4 September 2000, pg. 15.

³⁵ Simi, *Op.Cit*, pg. 2.

The first eco-labelling program to be introduced was in Germany in 1979 and was labeled as *Blue Angel*. This program was the first eco-labelling scheme to be introduced to the global business world, which later inspired the development and implementation of type I eco-label in many countries³⁶. There were some examples, such as Malaysia introduced "*Sirim Eco-label*", Japan with "*Ecomark*", Taipei with "*Green Mark*", Singapore and Thailand each with "*Green Label*", Australia with "*Environmental Choice*", Sweden with "*Good Environmental Choice*", and there are 27 (twenty seven) countries that have already had eco-labelling program³⁷. The implementation of eco-labelling program essentially consists of 3 (three) types:³⁸

- a. Type 1: voluntary, multiple criteria base practitioner programs (ISO 14024)
Type 1 is the most common type used worldwide by independent third party coming from exporting countries or importing countries, and such type of eco-label contains highest score.³⁹ For example, a country will export products to certain destination country, and the importing party requires eco-label, then the exporting parties shall seek independent third party to evaluate the products.

The criteria to endorse eco-label are commonly multi-criteria, with respect to the environmental impacts taking place as long as the product lifecycle. The participation of businessmen in applying the eco-label type 1 is voluntary. Eco-label phase I program consists of several phases:

1. The selection over goods and service categories;
 2. Development and determination of eco-label criteria;
 3. Preparing certification mechanism and facilities, including testing, verifying and evaluating as well as giving license for using eco-label logo.
- b. Type 2: self-declaration environmental claims (ISO 14021)
Eco-label type 2 is a self declaration or self claim about environment made by the related manufacturers or businessmen. Eco-label type 2 contains the lowest score.⁴⁰ Eco-label type 2 can be a symbol, label or statement written on the product or product packaging, or product information, technical bulletin, ads, publication, marketing, internet and the others. The examples of such statements or claims are 'recyclable', 'recycled material', 'biodegradable', 'CFC-free'.
 - c. Type 3: quantified product information label (ISO 14025)
Eco-label type 3 is based on multi criteria such as those included in eco-label type 1, yet with detailed and comprehensive information about the achievement scores of each of criteria and quantitatively presented on the label that informs the condition before the beginning process of a product manufacturing. Evaluation of the accomplishment of each of criteria is based on study on a product lifecycle. For instance in the study on cotton, one shall examine whether the cotton tree is

³⁶ Deni Bram, Produk Ekolabel Sebagai Informasi Perlindungan Konsumen dan Lingkungan Dalam Rezim Perdagangan Internasional, *Jurnal Law Review Fakultas Hukum Universitas Pelita Harapan*, Volume XII No.2, November 2013, pg. 129.

³⁷ www.globaleco-labelling.net.

³⁸ *Ibid*, pg. 128-129.

³⁹ ISO 14000, ISO 14001 dan Ekolabeling, Jakarta: *Jurnal Hukum Bisnis*, Vol. 6, 199, pg. 56.

⁴⁰ *Ibid*.

planted using pesticide or not; then how it is transported; how the manufacturing chain is (whether or not an environmental pollution takes place); until the results, namely in the form of clothes, whether or not unused clothes will turn into waste, and if they will cause damages to the environment or not.⁴¹ The information is expected to help consumer to be able to compare environmental performance of any products based on the information on the label and then choose the product based on the priority criteria of each consumer.

There are 2 (two) critical opinions relating to the eco-labelling effectiveness on trade and environment, they are⁴²: First, the eco-labelling effectiveness is unclear. Indirectly through the change in consumer behavior, eco-label affects the utilization goal of natural resources. However, there are consumers that care much for the environment and there are not, while the essence of eco-label effectiveness lies on the consumer's awareness of environment. Second, most of eco-label programs are independently created by each country. Criteria for gaining eco-label certification are commonly developed and adopted by each country, thus the criteria are intentionally or unintentionally determined in the interests of domestic businessmen. If domestic businessmen can more easily apply the criteria on eco-label program compared to those foreign businessmen, this will arise unexpected things on trade or rise trade conflict.

Ludwig Kramer⁴³ further said that if there are many inconsistent and unrelated eco-label

programs that refer to the environmental aspect of a product, the programs shall be divided into 2 (two) main groups: a) **environmental quality labels** which present the environmental performance or an environmentally "good" composition of products and which want to incite buyers and users to make an informed choice and prefer the environmentally "better" product. The examples are the agricultural products which are results of ecological production and are given the "organic farming" label or labels for energy use, b) **environmental warning label** which labels that warn of environmental risks and dangers of a product. The examples are on the chemical use, which can harm the environment, so that it uses "dangerous to the environment" label or products containing GMOs to use "GMOs free" label.

b. Eco-labelling Program in Indonesia

The development of eco-label program in Indonesia drew bigger attention as domestic business world rose awareness of environment from two aspects: a) using eco-label as an instrument to support the realization of sustainable development in Indonesia, b) as an instrument to increase Indonesia's product competitiveness at global market.⁴⁴ Some examples could be seen in 2003 when Indonesian furniture was rejected at US market due to the absence of eco-label certificate, or Indonesian fish sardine products could not be exported to European union market due to the absence of label of fish species *sardenpilchardus*⁴⁵ In 2012, Indonesian exports, such as paper and paper products faced trade barriers at US market, as

⁴¹ *Ibid.*

⁴² Kenzo Abe et al, *Op.Cit*, pg. 2-3.

⁴³ Ludwig Kramer, *Environmental Law-5th Edition*, London, Sweet & Maxwell, 2003, pg. 230.

⁴⁴ Deni Bram, *Op.Cit*, pg. 130.

⁴⁵ Sri Rahayu Oktoberina, *Op.Cit*, pg. 437.

there was perspective that Indonesian paper products had caused damages to the forest and exceeded expiry date⁴⁶.

Considering the eco-labeling development, then in 1994 Environmental Impact Controlling Agency started to coordinate the eco-labelling development in partnership with other related institutions such as Department of Trade and Industry, Department of Forestry Affairs, Health Department and the others. In 2002, to continue the efforts, Ministry of Environmental Affairs designed some national eco-labelling criteria for some product priorities such as: tissue paper and packaging paper, textile and textile products, leather and shoes. Adding to that, the Ministry of Environmental Affairs prepared the ratification of ISO 14020 standard on General Principles of Eco-labelling to be Indonesian National Standards (SNI).⁴⁷

According to Government Regulation Republic of Indonesia Number 46 Year 2017 Concerning Economic Instrument of Environment, stated that eco-label is one of the instrument called by Environmental Friendly Label.⁴⁸ The objectives of this regulation is through those economic instrument could encourage central and local government and every stakeholders towards environmental preservation.

As previously mentioned that every country has its own standard or regulation on trade, which all trade players from different countries shall fulfill, Indonesia, particularly the forestry related sector, can draw a lesson from that furniture rejection

case and raise awareness of conducting eco-labelling certification since damages in Indonesian forests have run worse and the eco-labelling certificate is a must in international trade. Indonesia can no more neglect the eco-labelling requirements for its forestry products as the sustainability of forestry products depend so much on export markets.⁴⁹ The same requirement goes to the paper and paper products.

The eco-label program implementation in paper and paper product industries finally brought positive results. In 2006 until 2008, Indonesian paper and paper product exports rose, and in 2010 they continued to rise after slowing in 2009 due to global financial crisis⁵⁰. The same condition also took place in eco-labelling implementation in forestry industry. Ministry of Forestry Affairs reported that between 2004 and 2011, forest damages consistently declined⁵¹. Seeing the data from two production sectors, we could see that eco-labelling application brought positive impacts to Indonesia, giving it more competitive power against other manufacturers in dealing with global regulations and standards. In fact, eco-labelling program also contributed to the decreasing damages in Indonesian forests.

Eco-labelling program in Indonesia has led to the development of eco-label accreditation system and certification. Indonesia becomes the only country that operates eco-labelling program through accreditation system. It means that eco-label certification or eco-labelling license for a product is issued by eco-label certification agency (LSE) that has been accredited by

⁴⁶ Destyane Putri et al, *Op.Cit*, pg. 35.

⁴⁷ Deni Bram, *Op.Cit*, pg. 130-131.

⁴⁸ Article 1 (20) Government Regulation No. 46 Year 2017.

⁴⁹ Emil Salim, *Op.Cit*, pg. 2.

⁵⁰ Destyane Putri et al, *Op.Cit*,

⁵¹ *Ibid*, pg. 36.

National Accreditation Committee (KAN)⁵², namely LSE-MALECO and LSE-PAPICs.

Adding to the LSE, Indonesia has others eco-label institution called Indonesian Eco-label Institution (LEI). LEI was established in 1998 as a work result of Eco-label Working Group in 1994. LEI has a duty to run eco-label certification implementation in Indonesia.⁵³ In October 2004, LEI change its form of organization to organization based on constituents.

Currently, another new eco-label programs are already established in Indonesia for industrial and manufacturing programs. National Standardization Agency (BSN) has determined 10 (ten) SNI criteria of product eco-labelling to operate accreditation and eco-label certification in Indonesia, they are⁵⁴:

- a. SNI 7188.2.1: Synthetic Wash Detergent for Household Use;
- b. SNI 7188.3.1: Finished Leather Product;
- c. SNI 19-7188.4.1: Textile and Textile Products;
- d. SNI 7188.3.2: Casual Shoes Made of Leather;
- e. SNI 19-7188.1.3: Print Paper without coating;
- f. SNI 7188.1.4: Print Paper with coating;
- g. SNI 19-7188.1.2: Sanitary Paper;
- h. SNI 7188.1.1: Packaging Paper;
- i. SNI 7188.5.1: carbon zinc primary and alkaline batteries;
- j. SNI 7188.6: Wall Paintings.

Then, BSN has also issued 3 (three) SNI relating to eco-labelling application, they are⁵⁵:

- a. SNI 7288.1 is ways to test bio-cumulative compounds with co-efficiency of octanol-air determined in chromatography as high level liquid;
- b. SNI 7288.2 is ways to test organo halida that can be absorbed (AOX) in waste water in microcoulometry;
- c. SNI 7288.3 is ways to test biodegradation of surfactant anionic.

Eco-label program application in Indonesia however does not always run smoothly. As eco-label program in Indonesia started in 2004, 2 (two) LSEs accredited by KAN issued only 5 (five) eco-label certificates, 3 (three) of which were issued by LSE-MALECO and the rest 2 (two) were issued by LSE-PAPICs. Those five certificates were issued for producers of paper products without coating⁵⁶.

Therefore, to conclude, Indonesia gains advantages by implementing eco-label program (products) in terms of⁵⁷:

- a. Improved product competitiveness at both domestic and international markets;
- b. Improved corporate image;
- c. Improved product efficiency, HR efficiency through 3R (Reduce, Re-use and Recycle) and pollution control;
- d. Support for government's efforts in environmental preservation;
- e. Support for implementation of sustainable development principles.

⁵² Suminto, *Op.Cit*, pg. 203.

⁵³ www.lei.or.id.

⁵⁴ Suminto, *Loc.Cit*.

⁵⁵ *Ibid*.

⁵⁶ Suminto, *Op.Cit*, pg. 205.

⁵⁷ *Ibid*, pg. 206.

3. Eco-label, Environmental and International Trade

As previously explained, eco-labelling represents high concern on environmental protection by promoting standardization. Indeed, international trade needs standardization, considering the environmental differences at each country that involves in global trade activities, and despite the needs from the countries to conduct trade liberalization.

The environmental difference is the main reason for a country to implement protectionism by enacting trade barriers in the forms of tariff and non-tariff barriers to prevent the environmental impacts from the imports⁵⁸. For instance, it will not be a problem for a country to release SO₂ emission during the production process domestically, but it will be a problem if the products are exported to the other countries that have standard policy for free SO₂ emission in production process of any imported products.

Trade barriers in fact will hamper international trading activities. So while eco-labelling was promoted, many countries, particularly the developing countries, saw it as one of trade barriers considering the power of eco-labelling to rule out whether or not a product can be exported to a country (developed country). Therefore, there has been a perspective saying that eco-labelling is

a new form of protectionism practice⁵⁹. Such perspective emerges because in international trade, eco-labelling has potential to create trade barrier and can be misused as a tool to protect a country's interests.⁶⁰

Hence, World Trade Organization, which is an institution with authorities to administer and supervise the international trade flows, was trying to introduce an effective solution through the issuance of some eco-labelling policies, i.e. the GATT, the General Agreement on Trade in Services (GATS), the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary or Phyto-Sanitary (SPS) Measures, while it also released the Code of Good Practices for the Preparation, Adoption and Application of Standards as Annex-3 of TBT Agreement in order to facilitate eco-labelling and standardization so as to make sure it would not rise conflict with the agreed international trade framework.⁶¹ Key point for WTO and the organization members is to not apply discriminative act against requirements and implementation of eco-labelling between domestic manufacturers and importing parties for domestic goods and services.⁶²

*Agreement on Technical Barriers to Trade (TBT Agreement)*⁶³ is a regulation applied to WTO member countries. Although the agreement does not clearly state the eco-labelling, it states labelling requirements as technical requirements and standards⁶⁴.

⁵⁸ Masitha Tismananda Kumala, *Pengaruh Regulasi Eco Labelling di Uni Eropa Terhadap Regulasi Ekspor Kayu di Indonesia*, Perspektif-Kajian Masalah Hukum dan Pembangunan Vol. 22 No.1, January 2017, pg. 33.

⁵⁹ Riza Noer Arfani et al, *Praktek New Protectionism Dalam Perdagangan Dunia: Pemanfaatan Isu Lingkungan Dalam Perdagangan Kayu Indonesia-Amerika Serikat*, Monograph Series: Indonesia's Strategic Topics in International Trade, Pusat Studi Perdagangan Dunia Universitas Gadjah Mada, 2012.

⁶⁰ Center for International Environmental Law, *Eco-Labeling Standards, Green Procurement and the WTO: Significance for World Bank Borrowers*, Washington DC and Geneva, Switzerland, March, 2005.

⁶¹ Simi, *Op.Cit*, pg. 4.

⁶² *Ibid*.

⁶³ www.wto.org-*Agreement on Technical Barriers to Trade*.

⁶⁴ National Board of Trade-Global Trade Division, *Report: Eco-labelling and the WTO: Issues for Further Analysis and Clarification*, March, 2012.

In general, the agreement introduces standardization for the application of non-tariff barriers in international trade, namely how national laws shall rule out: a) technical rules that unconditionally regulates product characteristics, the product manufacturing process, and production method of a product, b) flexible standards such as guide on product characteristic, and product manufacturing process and production method⁶⁵. Rules contained in TBT Agreement are composed of national laws required in the interest of environmental protection, among which are about efficient standards, labeling requirements, waste management, energy conservation, resource preservation, and other variety of policies that are particularly designed for supporting MEA's regulation implementation⁶⁶.

Article 2.2 of TBT Agreement is an article that contains exemptions in favor of environmental protection. The article says that technical rules in trade must not limit any trading activities to meet the authorized goals. Authorized goals herewith refer to national security requirements, protection over human or flora or fauna health, or environmental protection⁶⁷.

The application of Article 2.2 of TBT Agreement can be learned from the US-Tuna versus EU-Sardines dispute, while US Shrimp-Turtle and forestry product dispute involved GATT rule implementation.

US-Tuna dispute⁶⁸ related to "dolphin safe" label policy applied by United States to all tuna importing countries and tuna products with aim at protecting consumers as well as the dolphins themselves. Mexico brought the United States' labelling case to WTO and considered such policy as a trade barrier. Meanwhile, EU-Sardines dispute with European Union took place when European Union released a policy saying that only 1 (one) fish species could be labeled "sardines". Then, US Shrimp-Turtle happened when United States placed a ban on shrimp and shrimp products from exporting nations not certified by US authorities. The United States wanted exporting countries to have their shrimp and shrimp products certified by the US authorities to prove that they used harvesting methods not leading to incidental killing of sea turtles above a certain level. The forestry product dispute on the other hand occurred between 199 until 1994 in some European countries, such as Austria, United Kingdom, Germany, Netherlands, which required label to be put on all imported tropical wood and its derivative products that were not manufactured on sustainable basis.⁶⁹

If we looked on those disputes, there are some major points relates to the implementation of eco-labelling in accordance to TBT Agreement:⁷⁰

- a. Whether it is agreed or not that the eco-labelling policy is a technical regulation of a country in accordance to TBT

⁶⁵ Aisis Arrifianthy Fauzi, *Op.Cit*, pg. 14.

⁶⁶ *Ibid*, pg. 15.

⁶⁷ www.wto.org.

⁶⁸ www.wto.org, Dispute Settlement, United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Product.

⁶⁹ Richard Bonsi, A.L Hammet and Bob Smith, Eco-labels and International Trade: Problem and Solutions, *Jurnal of World Trade*, 42 (3), 2008, pg. 414.

⁷⁰ Aisia Arrifiany Fauzi, *Op.Cit*, pg. 20.

Agreement, all depend on the country's goal itself and whether or not the goal is acceptable according to Article 2.2 of TBT Agreement;

- b. To realize the acceptable or unacceptable goal using eco-labelling policy, then a country has the right to determine by itself the priority level of the goal;
- c. Considering the environmental protection objective against international trade, with respect to environmental standards applied at each country, then it is important for a country to have free right to determine their own level of the environmental protection if that is not against rules of GATT and of other agreements.

Furthermore, considering other WTO disputes, eco-labelling is used as the substitute to trade limitation act and as an instrument to prevent obstacles that possibly occur between trade and environmental policy, then it will be pessimistic to see the capability of eco-label to give solution to environmental problems⁷¹.

The effectiveness of eco-labelling implementation impact on environment can be seen from survey results by Federal Environmental Agency of Germany at the implementation of eco-label program called "Blue Angel" in Germany, showing that the program brought positive impacts on environment, the same as the one applied in Sweden where such similar program called "Nordic Swan" could reduce sulfur emission by 11%, COD emission by 21%, and OAX emission by 50% in pulp and paper mills. Yet, the good impact of eco-label on the environment is difficult to differentiate in comparison to

the performance of the implementation of other environmental instruments⁷². Therefore, it is better to position eco-labelling as part of environmental management policy.⁷³

CONCLUSION

Eco-labelling program have the potential to be misused as technical barriers to trade. Therefore, developing countries must be concern with the market access of their exports into developed countries. Developing countries needs to be innovative in the strategic positioning of their products in international trade, besides that developing countries producers be aware of the nature of international debate occurring within the context of trade and environment. On the other hand, every country whether is a developing or develop countries needs to understand and see, that eco-labelling should only be seen as a part of a range of policies for environmental management.

It can say that eco-labelling is an effective way to protect the environment, provided it is non-discriminatory, with principles and procedures that have wide acceptance both nationally and internationally. But for attaining the same countries need to harmonize different eco-labelling program, ensure mutual recognition and technical assistance to developing countries so that program can become more effective and have a positive rather than constraining effect on trade.

Lastly and most importantly, the vast difference between the environmental concerns of various countries should be recognized. Because, if the difference of

⁷¹ Daniel Melser and Peter E. Robertson, *Eco-labelling and the Trade-Environment Debate*, UK, Blackwell Publishing Ltd, 2005, pg. 60.

⁷² Kenzo Abe et al, *Op.Cit*, pg. 9.

⁷³ Daniel Melser dan Peter E. Robertson, *Op.Cit*.

environmental concerns not being recognize, it will impose conditions such as “MFN” status, and it will be accorded to each and every trading partner, then the use of eco-labels for constraining potentially hazardous behavior to environment inevitably get constrained.

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