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Eco Labels as Regulatory Measures

A comparative study of the Eco Flower and the Nordic Swan

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Summary

Eco-labels show consumers which products' impact (multi-criteria basis) on the environment is the smallest compared to competitively and functionally similar ones and is intended to change consumption patterns. Generally most voluntary eco-labelling schemes have similar distinctive features, the main goal being that of promoting environmentally 'superior' products in providing consumers information and raising environmental standards. The eco-label is functioning as a tool for international understanding of the importance in attaining sustainable development. Voluntary agreements are used as a complement to environmental policy instrument, going beyond environmental targets set in different regulations.

In both programs the design of dispute resolution depend on each member country. Thus, in case of non-compliance the member state is responsible in taking measures though applicants need to provide independent documentation through tests on the conformity of their products with labelling criteria. Independent environmental agents carry out periodic inspections. Further more, the Eco-labels examined in this paper are protected trademarks. When importing products from countries outside the Union, the monitoring of compliance with required standards, production methods and issues on labour is more complicated.

Voluntary eco labels are not in them selves discriminatory trade measures, but influencing consumer behaviour, consumption, producers and service providers they may have the effect of trade barriers. The presence of all sorts of private, national, single or multi criteria label causes considerable confusion amongst consumers and distortions in the market place. Through agreements and global co-operation it will be easier to achieve environmental goals without inhibiting free trade issues.

Abbreviations

EC European Community

ECJ European Court of Justice

GATT General Agreement on Tariffs and Trade

IPP Integrated Product Policy

NGO Non-Governmental Organisations

SME Small and Medium sized Enterprises

WTO World Trade Organisation

1 Introduction

1.1 Aim of the thesis

Rules and legislation on environmental protection are becoming more common as well in nations as within the EU and in global organisations as the World Trade Organisation (WTO). While the importance of liberating trade becomes more significant, rules on trade that end up in harming the environment are unacceptable. Meanwhile, rules on environment cannot be structured in a way that might give a negative impact on world trade. Whilst eco-labels are meant to be one of the solutions in balancing environmental, economic and social concerns, it is likely that rules on environmental protection can constitute barriers to trade. In order to examine these aspects the following questions need to be approached;

- What is an eco-label (eco-label) and in what way can it contribute to striking a balance between trade freedom and sustainable development?
- Can European countries be criticized for being protectionist and for harming imports?
- Are multiple eco-label programs only causing confusion?
- Is it possible to have a successful voluntary eco-label?

1.2 Method and material

Comparison is made of the well-known and highly implemented Nordic Swan and the European Eco Flower just arising in consumer awareness. The efficiency of this rather new approach in solving environmental and trade problems will be examined. Identifying the particularities of eco labels and comparing the design and legal basis of the two programs is the first step. When dealing with legal issues concerning the Nordic Swan, reference to Swedish law and regulations is predominant, while the significant impact of European law cannot be neglected, constituting a part of national member state law.

When identifying goals and principles, differences and similarities are easier to understand and locate. Further the very basis of environmental considerations is distinguished. The origin of environmental rules is most often found in its various principles. Questions concerning transparency and public participation will be analysed in order to establish their significance for the proper functioning of labels. Principles used in standard setting will give some guidance on the development of acceptable criteria for eco-labels.

Aspects on trade will be dealt with using particularly different contributions (compiled in books) to international conferences, European law provisions as well as WTO agreements. Different possible scenarios are then examined. Principles used in standard setting will give some guidance on the development of acceptable criteria for eco-labels. Further the very basis of environmental considerations is distinguished.

Various journals and Internet sites have shown to be very useful for this paper.

1.3 Scope

Since each Nordic country is free to decide the administrative structure on the national level the comparison is concentrated to the Swedish system. Differences are not remarkable, but it seems unnecessary to describe each national system in detail. The Nordic Swan programme is clearly made with specific interest taken in the Nordic market, and the European Eco-Flower is concentrated on the functioning of the internal market (all according to the program's objectives).

Keeping myself to a large extent within the boundaries of the European Union is necessary since this subject is raising various issues and touching numerous topics. Still, given the development towards globalisation and liberalisation of trade, questions concerning global trade and competition have to be dealt with, at least on the surface if not, important aspects will be left out.

When writing about goods and producer issues, services and service providers are also included. In this paper, 'environment' comprises the interaction, interdependence and relationship between water, air, land, all plants, animals and humans. Also concerns of public and individual health and the protection from environmental contamination are covered.

2 Shared Features in Eco-Labels

2.1 The purpose of environmental labelling

Agenda 21 support and promote the increase and development of eco-labels where the emphasis lies on consumer information.¹ Voluntary agreements are used as a complement to environmental policy instrument, going beyond environmental targets set in different regulations. Still it is necessary to maintain 'ordinary' command-and-control instruments not relying entirely on market forces. To give any results, the laws have to be very detailed, standardizing everything from the installation of a certain technology to environmental targets. The objective of eco-labels is to guide consumers in making environmentally sound², or at least *sounder*, choices. But if targets and standards are set too low the eco-label scheme will not be environmentally effective. Generally most voluntary eco-labelling schemes have similar distinctive features.

In a voluntary scheme it is the producer who decides and applies. Governments and the European Union cannot force industry to apply for the label nor to follow labelling standards. It all depends on which factors every specific producer chooses to emphasise. Since it can be costly to test products maybe even change processes, applying for an eco-label can implicate some economic risks. Labelling products can also provide benefits in being the innovative firm. This will be discussed further on.

It is shown that voluntary eco-labelling can be quite successful in stimulating innovation and consideration of individual actors (and sometimes even an entire branch of industry) resulting in pollution abatement.³ But it is not only the quest for a better environment that motivates industry to apply for the label. Without some benefits like economic gain or marketing advantages no individual actor would envision participation in a labelling-scheme given the increased costs. Another reason to apply for an eco-label is the pending risk of regulation. If government plans to tighten environmental legislation, an industry that is already trying to use its resources as effectively as possible will try to avoid the supplementary cost of regulation by applying for the label.⁴ Since eco-label standards are harsher than legislative ones, the company will gain a lot of good will in the eyes of consumers and Non Governmental Organisations (NGOs).

¹ Agenda 21, Rio de Janeiro (1992), Art 4.2.1.

² Prop 1997/98:45, *Miljöbalken*, Part 1, pages 171, 425.

³ Today it is difficult to find non-labelled detergents in Sweden.

⁴ Carraro, C., and Lévêque, F., (1999) *Voluntary Approaches in Environmental Policy*, Kluwer Academic Publishers, London, page 7.

In the environmental sector, global co-operation is necessary since problems are rarely concentrated to one region exclusively. Keeping in mind the geographical differences and other national and regional particularities, environmental regulations are in general drafted as framework legislation

The following goals⁵ can be distinguished in both programs:

1. Protect the environment in raising environmental standards, prioritising sustainable development. The product's impact on environment is smaller than other non-labelled products' in the same product group.

2. Raise the sales volume and expand the market of labelled products while improving the products image and the company reputation.

3. Boost consumer knowledge and recognition of labelled products making them aware that purchase of labelled products stimulates environmental concerns. Enhanced consumer awareness results in greater demand, which ends up in bigger green market shares.

4. Make reliable information easily available, putting an end to deceiving advertising of products said to be environmentally friendly when in fact they are not.

5. Convince producers to include environmental concerns in their process- and production methods. The standards set influence manufacturers' innovation enhancing environmental (and economic) benefits.

In a voluntary scheme it is the producer who decides and applies. Governments and the European Union cannot force industry to apply for the label nor to follow labelling standards. It all depends on which factors every specific producer chooses to emphasise. Since it can be costly to test products maybe even change processes, applying for an eco-label can implicate some economic risks. Labelling products can also provide benefits in being the innovative firm. This will be discussed further on.

If targets and standards are set too low the eco-label scheme will not be environmentally effective. Industry evolves by it self; research, new technologies and inventions can in a natural way improve process- and production methods, making them 'friendlier' towards the environment. Thus criteria in a voluntary approach as the eco-label must at all time be sharp but not totally impossible to attain, staying more advanced than what can be realised through legislation.⁶

⁵ Backman, M., Lindhqvist, T., and Thidell, Å., (1994) *Nordisk Miljömärkning - Beskrivning, Analys och Förslag*, University of Lund, page 10.

Regulation (EC) 180/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme, Preamble.

⁶ Carraro, C., and Lévêque, F., (1999), pages 6f.

2.1.1 Comparing the Nordic Swan with the Eco-Flower

Both the European label and the Nordic one are designed as voluntary approaches, a contract between industry and public authorities, the goals and principles being basically alike.⁷ They are both third party certified so-called Type 1 labels according to the International Organisation for Standardisations ISO standard 14024, providing producers with information about the standards they have to attain to be able put a label on their products.

Depending on who is setting criteria (public authorities, industry or both), standards will inevitably be different. Both programs have chosen a certain administrative structure; trying to involve as many interested parties as possible while maintaining its professionalism. But both programs can be considered to be bureaucratic, what else is to be expected; representatives from different countries and various sectors with rarely concurring ideas and ideologies has to join forces to set environmental requirements and labelling criteria.

The Community is increasing its recourse to target standards, these being based on and coherent with the Community environmental objectives. According to the Commission, market-based instruments are an excellent way of endorsing environmentally stable development.

In Sweden the environmental goals are more specified.⁸ As market-based instruments are often used to give incentives and attain goals⁹, it is not surprising that the Nordic Countries and the Community is increasingly moving in this direction. Nevertheless there are still limits to environmental provisions. The problem in balancing economic, ecological and social issues, technical feasibility (its economical viability, *Best Available Techniques*), health requirements and the aspired standard, is obvious.¹⁰ Considering proportionality will give guidance when deciding standards and working plans. Estimations and life cycle evaluations have to be done to find the right balance of concerns. In making cost-benefit analyses various possible 'costs' are compared to the positive effects and 'benefits' a label will provide for this product group. Environmental and social costs will be internalised, that is, included in the production costs the product will

⁷ Nordic Ecolabelling Board, *Regulations for Nordic ecolabelling of products*, 2001, introduction.

Regulation (EC) No 1980/2000, Preamble (1).

⁸ Prop 2000/01:130 *Svenska Miljömål – delmål och åtgärdsstrategier*,

⁹ COM/2001/0068 final, *Green Paper on integrated Product Policy*, chapter 4.4.

The main instruments are; deposit - refund systems, tradable permits, tax- and financial incentives, different voluntary agreements as the eco-audit scheme, civil liability for environmental damage.

¹⁰ Opinion on Economic Growth and the Environment: Some Implications for Economic Policy Making (Communication from the Commission to the European Parliament and Council) (95/C 155/01), point 1.1.5.

entail. If the product group is chosen well, it is believed that these market-based instruments are economically efficient.¹¹

The operational approach may vary quite significantly between various labels but the goals are generally the same; promote certain products. The heart of Community law is its objectives,¹² environmental principles making part of them, while legislation and goals based upon principles create the basis of Nordic regulations. Be that as it may, in both programs the main goal is that of promoting environmentally 'superior' products in providing consumers information. Through the development of criteria, product control by licensing and in providing information, the goals of an ecolabelling programme can be attained. It is very important that the life cycle considerations are not discriminatory. Further more, sound technical and scientific data is given the highest importance. This is particularly important in the European scheme, as interested parties do not have any recourse to (judicial) review once the decision is taken.¹³ According to the Nordic Regulation, applicants have recourse to review of decisions concerning denied participation or withdrawal of a license.

In addition, there is a more or less independent body that set criteria and awards the label.¹⁴ Governments and the European Union cannot force industry to apply for the label nor to follow labelling standards. Labelling products can also provide benefits to enterprises' image as the innovative firm.

In the European program the right to apply is limited and applicants from outside the Union can send their applications to any country where the product is **marketed**.¹⁵ Applications from non-Nordic producers are sent to the national body that was responsible for the development of **criteria** for the product in question.¹⁶

¹¹ OJ No C 390,31.'12.'1994, point 2.2.1.

¹² As with all EU objectives there is not really a way to legally enforce these principles, since they are only "objectives".

¹³ Reg (EC) 1980/2000, Annex IV.

¹⁴ OECD Publications Department, *Environmental Labelling in OECD Countries* (1991), Paris, page 31.

¹⁵ Reg 1980/2000, art 7.1-3.

¹⁶ Nordic Eco-labelling Board, *Rules and procedures for the ecolabelling organisations*, 2001, introduction.

2.2 General principles in Eco-label schemes

2.2.1 Sustainable development

Before the Rio Conference in 1992, development was the equivalent to economic growth, an increase in country and individual wealth. During the Rio Conference all participating states agreed upon that development so far only had deteriorated the earth and its eco-system and that it no longer was possible to maintain the current approach. Principle 3 of the Rio Declaration explains the ethical dimension of sustainable development, the relation and link of justice between generations. Sustainable development can also be explained as a rise in a state's prosperity and assets where production does not bring about a corresponding decrease or degradation of its natural resources.¹⁷

Striking a balance between economic, ecological and social needs and means is one way to engage in the pursuit of sustainable development. The main concern should be to meet vital needs of the poor. But science, technology and economy entail certain limits. Different instruments are available to attain an acceptable balance (since taxation is not necessarily the most efficient solution.)¹⁸ Preparing for the World Summit in Johannesburg in September, members of the EU have come to the conclusion that developed countries need to take their responsibility in changing production- and consumption patterns that are not sustainable.¹⁹ Using the global trade system as a means to overcome developing countries' problems, focusing on small producers/manufacturers without neglecting sustainable development, is seen as one of the imperatives to obtain an efficient global market. A part of this strategy is embracing environmental information and public participation.²⁰

Environmental labelling is one of the methods used to attain a sustainable society. According to in. 7 in the EU eco-label preamble, application of the principle has to be done within the framework of the realisation of the internal market and as stated in Art 2 in the Treaty, the Community's objective is to

*...promote throughout the Community a harmonious, balanced and sustainable development of economic activities.*²¹

It is not surprising that specification of economic activities is made. The concentration on trade issues, show upon the heritage of the EC. Recently the Council stated that effective use of resources and more environmentally friendlier

¹⁷ World Commission on the Environment and Development (1987) *Our Common Future* (The Brundtland Report).

¹⁸ Draft ENV/2001/00046, page 5.

¹⁹ 2355 Rådet-MILJÖ, part II.

²⁰ 2355 Rådet-MILJÖ, parts II.3-4

²¹ Decleris, M., *The Law of Sustainable Development- General Principles* (2000) Environment Directorate-General, page 22.

technologies in an economy based on knowledge is necessary to attain sustainable development.²²

It is stated in the Swedish consumer policy that our society's impact on the environment has to become less significant. Consumption patterns that are focused on environmentally friendlier products will contribute to sustainable development. The Swedish government is perhaps more focused on the environmental aspect than trade.²³ The government is responsible of introducing and supporting sustainable development in all sectors, including research, development and education. The ultimately objective is to fight global economic problems in changing consumption and production models.²⁴ The assumption that economic growth necessitates resource consumption has to be reconsidered.

When promoting design, marketing and use of a product (entire life-cycle approach) with a reduced environmental effect and in providing consumers with better information on the environmental impacts of consuming that product, a better protection of the environment and sustainable development will be encouraged. The principle comprises other principles as the integration principle, the proportionality principle and sustainable use of natural resources.

Western Europe governments are aware of the necessity of sustainable development and are more or less determined to embrace it. Today developing countries and economies in transition experience some difficulties in this domain. Since the present situation is challenging, concern for future generations seems distant not knowing how to ensure the survival of the existing.²⁵

2.2.2 Integration

Trying to avoid segregated and sectoral environmental law, where administrative authorities issued specific licenses to emissions in water and others to soil, air etc. without consideration taken to possible concurrent emissions, in preference of an integrated approach where the manufacturing entity counts²⁶, many European countries have made general environmental protection acts, 'Codifications'. Integration can be reached by bringing together all environmental legislation in one act or merely co-ordinating legislation in this field.²⁷ Additionally, incorporation of environmental issues in all sectors is necessary in dealing with this challenge. Pursuing the principle of sustainable development is not possible without

²² EU Council, 6592/02 (Press 47) (OR. fr) 2002/03/04.

²³ Prop 1997/98:145, *Miljöbalken*.

²⁴ SFS 1999:808, *Svenska miljömål*, pages 59, 63, 66.

²⁵ Sands, P, *Greening International Law* (1993) Earthscan Publications, London, pages 14,16.

²⁶ European Environmental Law Review, June 2000, *The Harmonization, Codification and Integration of Environmental Law: A search for Definitions*, page 174.

²⁷ Notes from course in International, European and Comparative Environmental Law autumn 2000, 2000/12/07, Maastricht, the Netherlands.

integration of environmental concerns in all policies.²⁸ Further more, it influences questions concerning trade and environment, but is not a means of deciding what the priorities should be in balancing free movement of goods and a high quality of environmental protection.

The integration principle is quite new for the Community, which can cause some uncertainty about its scope, competence, legal status and power.²⁹ Nevertheless, integration of environmental issues in a large range of different legislation is now compulsory. One example is the growing tendency of introducing environmental impact assessments and the directive on Integrated Product Policy. If environmental concerns are not integrated in Community legislation, the European Court of Justice has the capability of sanctioning this negligence through Article 234.³⁰ In Sweden, environmental concerns are high on the political and legislative agenda at least since 1969. The introduction in Sweden of the Environmental Code, *Miljöbalken*, is the result of the compilation of Swedish environmental laws.

2.2.3 Precaution

Risk management is fundamental in environmental law. Measures of protection should be taken even before objective certainty about the likely harmful impact on environment.³¹ Consequently, even if information and scientists are uncertain, decisions are taken through rational theories from known facts and through probable outcomes drawn from these facts to predict what is unknown. Since evaluations and hypotheses can be wrong this could at an extreme hinder all economic progress, consequently there has to be a balance between the costs the probable environmental harm may inflict and the economic costs of the measures taken, in other words, proportionality.³²

Products life cycles should be previewed from the very origin as raw-material extraction, which will result in product related environmental standards in all concerned media (air, water, and soil).³³ Energy and material flows need to be reduced. When environmental labelling is successfully implemented as a complement to other instruments and legislation in the environmental field, consumers are encouraged to choose environmentally friendlier products. Industry is then obliged to produce more of the demanded products and thus

²⁸ European Environmental Law Review, June 2000, page 178.

Treaty on the European Union, Maastricht, 17 February 1992, Article 6 and Article 174.

²⁹ Jans, J, *European Environmental Law* (1995) Kluwer monographs, London, pages 25-30.

³⁰ European Environmental Law Review, January 1998, page 18.

³¹ Rio Declaration On Environment and Development (1992), Principle 15.

EU Treaty Article 30 and Article 174.

³² Kiss, A., and Shelton, D., *Manual of European Environmental Law* (1997) Grotius Publications, Cambridge, pages 39ff.

³³ Green Paper, introduction.

environmental problems are diminished, the environmentally more dangerous products are **not even manufactured**. According to the Commission the best way to introduce more environmental concerns is through incentives to consumers and producers.³⁴ But the precautionary principle can be used to put barriers to trade and an ongoing debate tries to identify justifiable use of the principle. The Commission has even adopted a Communication on the proper application of this principle.³⁵

2.2.4 High level of protection

The Community is required to try to reach the goal of a high level of protection, ‘...seek to attain...’ which is linked to art 174. The Commission has to keep its eyes open for all new scientific development to ensure this goal.³⁶ It is noteworthy that the **highest** level of protection is not required which may seem strange, but this would not be possible since other objectives, as the functioning of the internal market, is equally aspired. In the rules on the Nordic label we are facing the same problem of selection, though the reason is somewhat different. The Nordic countries aim for a label that is most likely to acquire the best market penetration without exceeding the limit of one third of the market share. Labelled products have to be distinctive and if too many products obtain the label then standards are not tough enough.³⁷

A secondary positive effect of labelling occurs when the high level of quality influences further development and finally end up in being the general standard³⁸.

2.3 Problems in setting criteria

As already mentioned, all parties included in the criteria identification process have to seek agreement in all stages. If every interested party have opinions that measure equally the intention is just, but if parties disagree, negotiations will take place and finally criteria may not be as high as it could have been. Nevertheless, consensus will facilitate the efficiency and effectiveness of the regulation.

³⁴ European Environmental Law Review, May 1999, *Eco-Labels: Benefits Uncertain, Impacts Unclear?*, page 145.

³⁵ Directorate General for Trade, Informal Discussion Paper Rev 1, *The Non-Trade Impacts of Trade Policy- Asking Questions, Seeking Sustainable Development*, 2001/01/08, chapter 6.7.

³⁶ European Environmental Law Review, January 1998, page 15.

³⁷ Christensen, T., and Jensen, M., *Miljømærkning-en vej for politisk forbrug!* (1998) Roskilde Universitetscenter, pages 155f.

³⁸ Green Paper, chapters 4.3.2 f.

When the process of establishing criteria is too fast, strategic adjustments are neglected and criteria are poor. This occurs more easily in self-financing schemes where the survival of the label depends on the number of product groups and awarded licenses.³⁹ When targets are inappropriate the positive effect on the environment will merely be cosmetic since eco-labelling targets should be set considerably higher than what can be obtained in the near future by a natural development of process- and production methods.⁴⁰

However problems may occur in some sectors where few firms dominate the market. Participating in the criteria setting might render standards lower than desirable, and a whole branch of industry can actually boycott the provision and thus leaving it 'powerless'.⁴¹

States that have big uninhabited and wild deserted areas have a tendency to prefer imission standards. Binding limits for the levels of specific pollutants in air, water, etc. are provided for. Other countries prefer emission standards that regulate the amount private persons, industry and other operators may emit into air, water etc. Differences in the countries geographical assets and its history can also raise some questions.⁴² But consensus will facilitate the efficiency and effectiveness of the regulation, there will be less confusion, shared research etc.

For products imported from non-member states the selection of standards might be inappropriate or impossible to reach. Differing interests and conditions call for close collaboration with interested parties and especially developing countries.⁴³ However, principle 11 in the Rio Declaration implies that environmental questions can be set back for the preferential treatment of economic and social costs in certain countries.

To test whether trade conflicts are likely to arise some questions should be examined before deciding upon a set of criteria. Not only is the amount of concern taken to local disparities in the country of origin important but also if data is collected 'on location'. Criteria cannot favour domestic production.

³⁹ Backman, M., ed. (1994), pages 6, 51.

⁴⁰ Carraro, C., and Lévêque, F., (1999), page 6.

⁴¹ This happened in Germany in 1977, when the paper industry refused to apply for the Blue Angel. After the application and granting of the label to an American firm exporting paper products to Germany, all national producers are now using the label.

⁴² European Environmental Law Review, January 1998, page 17.

⁴³ Stockholm Declaration, Stockholm (1972), Principle 23.

3 The Nordic Swan

3.1 Introduction

Since 1989, the Nordic countries are all⁴⁴ collaborating in an eco-labelling program known as the Nordic Swan. The Swan is intended to guide consumers in making environmental choices and to motivate industry to invent more environmentally friendly products and processes, all this by using market forces to complement legislation.⁴⁵ Sweden has an objective of setting a good example in environmental law integrating environmental issues in all relevant legislation. Striving for international understanding of the importance in attaining sustainable development, the eco-label is supposed to function as a tool.⁴⁶

The environmental philosophy of the Nordic Swan serves as a guide in the process of choosing criteria. It is the *established vision* of sustainable development that has to be supported. When assessing potential product groups, environmental impacts that are connected to one or many of the prioritised areas in the Swedish environmental philosophy.⁴⁷ Advice is given on how to link the environmental philosophy to criteria, how to identify environmental threats and measures that can be taken to alleviate these threats. Defining environmental goals and a regular evaluation of the results makes also part of the strategies.⁴⁸

Over the years the label has shown to be quite successful.⁴⁹ The Swan logo can be spotted on thousands of products in 51 product and service groups.⁵⁰ When asked in 1998, Swedish (75%), Finnish (76%) and Norwegian (89%) consumers mention spontaneously the Nordic Swan. In Denmark participation in the scheme is quite recent and the knowledge about the Eco-Flower is somewhat bigger. On Iceland marketing has not been extensive.

In 2001 approximately 77% of Swedish consumers found the Swan label trustworthy, even if the gallery of eco-labels and the increasing number of labelled

⁴⁴ Well, Denmark are members of the Council since the beginning in the 50's, but during the 80's being the only Nordic country to be an EC member state they chose to be observers. Disappointed by the slow progress of the Eco-Flower the Danish decided to join the Nordic Swan in 1997.

⁴⁵ SOU 1999:145 *Nordisk miljömärkning – det statliga engagemanget*, Delbetänkande av Konsumentpolitiska Kommittén 2000, Stockholm 1999, page 5.

⁴⁶ Prop 1997/98:45 *Miljöbalken*, Part 1, page 155.

Prop 2000/01:130 *Svenska Miljömål – delmål och åtgärdsstrategier*, page 60.

⁴⁷ Prop. 1997/98:145, *Svenska Miljömål*.

⁴⁸ Nordic Council of Ministers, *Strategidokument för nordisk miljömärkning 1999-2001*, page 7.

⁴⁹ TemaNord 1999:592, *Nordiska konsumenter om Svanen- livsstil, kännedom, attityd och förtroende*, København, pages 48ff.

Christensen, T., and Jensen, M., (1998), page 153.

⁵⁰ SIS Miljömärkning AB, *Årsedovisning 2001*, page 15.

products foster suspiciousness. When it comes to attitudes towards the Eco Flower, consumers rather tend to be negative, associating it to less stringent continental rules on emissions, profit at all costs etc.⁵¹ Approximately 27% of Swedish consumers feel they can trust the Swan label, even if the gallery of eco-labels and the increasing number of labelled products foster suspiciousness. Consumers assume that standards are getting lower and control is less rigid since a growing number of products are accorded the label.⁵² The Nordic Swan is suggested to expand, intensifying the Nordic profile. Keeping in mind the Eco-Flower objective of only one single European label, this proposition seems strange.

3.2 The Operational Process

3.2.1 Organisation

In the Nordic system, the Nordic Council of Ministers (the Council) in which participants are chosen by national government decides final criteria on the basis of suggestions from national boards. Everyone can propose new product groups and criteria; this can even be made electronically on the official Swan-site.⁵³ The Council is contrary to the European Eco-labelling Board not exclusively set up for the purpose of the eco-label. The ambition is to have a homogeneous procedure in the Nordic countries that is why the Nordic Council of Ministers makes final program-related decisions and is in charge of the Nordic Eco-labelling Board.⁵⁴ This board coordinates the work of the national organisations. The government of each country selects the Nordic Eco-labelling Board and members of the national organisations. The Nordic eco-labelling board are responsible of deciding product groups, assigning one country for the research on each new product group and appointing expert groups. All Nordic eco-labelling board decisions in the choice of product groups and establishment of standards have to be unanimous.

The Swedish government has designated SIS Miljömärknings AB (SIS) as the competent body.⁵⁵ Members are chosen from government and diverse trade- and consumer organisations their main task is to propose and establish product criteria, grant licences and handle the marketing of the program, without any

⁵¹ TemaNord 1999:592, pages 48, 54.

⁵² TemaNord 1999:592, page 59.

⁵³ www.svanen.nu.

⁵⁴ Nordic Eco-labelling Board, *Rules and procedures for the ecolabelling organisations*, 2001, part B, point 2.

Nordic Eco-labelling Board, *Rules and procedures for the ecolabelling organisations*, 2001, Annex I.

⁵⁵ Also being the national Competent Body under EC Reg 1980/2000, Article 14.

purpose of profit.⁵⁶ They in turn chose the members of the Swedish board that is representing Sweden in Nordic reunions. Also here, different NGO:s and governmental departments represent trade, environment and consumer issues. The Board reunites at least four times a year, and decisions are taken by a ¾ majority.⁵⁷ With the assistance of expert groups (chosen by the Nordic eco-labelling board, on the proposition of the national boards and national designated labelling organisations) criteria is being examined. Competent members carrying a clear Nordic profile and who participate actively are responsible of background research, the basis in criteria setting.⁵⁸ Still final decisions are taken on a Nordic level.⁵⁹

Applications for a license are sent to the national labelling board. If foreign producers apply, they shall turn to the board that is responsible of criteria. The applicants carry all costs linked to documentation⁶⁰ and registration in all Nordic countries separately, is necessary if the producer wishes to sell his labelled products within the Nordic market.⁶¹ Still fees are decided nationally.⁶²

3.2.2 Developing Product Criteria

In order to describe and guide the development of criteria, the Nordic eco-labelling board presented a set of strategies explaining the principles that ought to be used in the selection. Most often it is the national labelling body from which the suggestion originated that will be responsible for the development of criteria. The strategies are subordinate to the Guidelines provided by the Nordic Council of Ministers.⁶³

Market penetration possibilities are balanced to the environmental impact of the product and at what point this impact can be mitigated.⁶⁴

⁵⁶ Nordic Eco-labelling Board, *Rules and Procedures on the Environmental labelling organisations*, introduction.

⁵⁷ Nordic Eco-labelling Board, *Rules and Procedures for the ecolabelling organisations*, 2001, Annex 1, points 3-5.

⁵⁸ Nordic Eco-labelling Board, *Rules and*, 2001, Annex 2.

⁵⁹ Nordic Eco-labelling Board, *Rules and Procedures for the ecolabelling organisations*, 2001, part A, points 2-5.

Environmental Labelling- Issues, Policies and Practices Worldwide (1998) Prepared for The Pollution Prevention Division, US Environmental Protection Agency, page B-24.

SOU1999:145, page 6.

⁶⁰ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 10.

⁶¹ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 7.

⁶² Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 10.

⁶³ Nordic Council of Ministers, *Miljöstrategi för nordisk miljömärkning*, 1996, pages 1f .

⁶⁴ Nordic Council of Ministers, *Strategidokument för nordisk miljömärkning*, 1999-2001, page 16.

At times only certain products within a product group can be awarded the label.⁶⁵ Appointing labels on products that would hurt the credibility of the scheme is not considered. This is understandable given the amount of Swedish, Norwegian and Finnish consumers that meant Swan-labelled products are not at all harmful for the environment.⁶⁶ Consequently if these so called “black” product groups are introduced in a larger extent consumers will not consider them as harmful anymore.

Since 1999 the model used in setting criteria is based on three factors, relevance, potential and steerability.⁶⁷ Thus the environmental impact of the product, the achievable environmental benefit and the extent to which eco-labelling will influence these parameters. This method of comparison is used to set standards that are supposed to be high.⁶⁸

In order to find proper criteria, the life cycle of potential product is examined. The boundaries need to be located and the particular goal defined. Since it is considered to be too demanding and time consuming for a producer to follow the production chain all the way to the raw material extraction, it is recommended to refer to the suppliers as the ‘first’ step in the production process. The inventory analysis is linked to the production as such and distribution. Energy- and material flows are examined and assessed, the environmental impacts need to be calculated on facts and objective. The use phase represents many various impacts on differing media. For that reason a classification is necessary, where impacts on water, soil, etc. are separated to facilitate comprehension. Then each estimated amount of environmental impact is stated for every category. Hereafter different potential product groups are estimated and valued. Finally estimation is made to clarify the environmental improvements that can be gained if the label is accorded for the products in question. Questions about recycling and working conditions are not left out. Evaluating the life span of a product is the procedure entailing most cost since the collection of necessary data constitutes up to 80% of total costs.⁶⁹ Producers are shown to be the main source of information when it comes to product and production issues. Retailers do not seem particularly interested in the criteria process, but some retailers are on the other hand very demanding on products generally assumed among consumers as being harmful (batteries, detergents etc.).⁷⁰ It is the problem of goal definition, where the product life cycle

⁶⁵ Företagshandboken, - Miljö 2001:3, chapter 11.4.

⁶⁶ TemaNord 1999:592, page 59.

⁶⁷ Nordic Council of Ministers, *Strategidokument för nordisk miljömärkning*, 1999-2001, page 20.

⁶⁸ Though it can always be discussed. A recent example: When the revised criteria for paper products was issued in January 2002, many NGO:s were opposing the new criteria said not to be sufficiently stringent.

www.naturochmiljo.fi/tillnordiskmiljomarkning.htm, visited 140702.

⁶⁹ Företagshandboken, 2001, chapters 11.4.4-6.

⁷⁰ TemaNord 2001:516, *Evaluation of the Environmental Effects of the Swan Eco-label-Final Analysis*, chapter 3.5.2.

starts and when it is seen as terminated. Consequently the life cycle procedure used will not be complete, many aspects such as the energy actually consumed when using laundry detergents (in a laundering machine) and environmental impacts connected to the production of raw-material etc., are repetitively omitted. Though transport and distribution factors are taken into account in the initial assessment of the product group. In addition, the Nordic labelling bodies have unlike priorities and methods of assessing environmental aspects and pollution. Furthermore, environmental legislation may vary⁷¹ and the impact of emissions is not necessarily the same in every country.

Every year criteria for between four and eight product groups are completed. And approximately four to six revisions are conducted. The Nordic programme focuses on its 'own' countries and has an official Nordic profile. Non-Nordic organisations⁷² (covering the whole spectra of possible applicants with one word) apply to the country responsible for the criteria. One particularity in the Nordic program is the obligation for the last company in the production chain to sign the application as well, meaning that even the end manufacturer is responsible of abiding by the regulation.⁷³ It was recently suggested that evolution of criteria and identification of new product groups should expand, putting more emphasis on the Nordic features and positions.⁷⁴

3.3 Transparency, Review and Supervision

Sweden has a long tradition of transparency in governmental and administrative decisions (*offentlighets principen*). The structure of expert groups representing a wide spectrum of knowledge and their participation in standard setting is important. Members of the group need to be competent and active involvement is encouraged. Active participation of all interested parties, stakeholders and NGOs has been an objective since the start. It is believed that this ensures consumer and producer confidence and credibility. Unfortunately, this objective has lately been difficult to attain, the balance of interested parties being disturbed by the extensive representation of industry. Not even 20% represented science and research and 10% environmental authorities. Out of totally 110 experts in February 1999, only 2 came from authorities dealing with consumer issues and 7 were attached to environmental organisations.⁷⁵ For the credibility of voluntary environmental

⁷¹ Backman, M., Lindqvist, T., and Thidell, Å., *Issues concerning some key problems in environmental labeling- Experiences from the evaluation of the Nordic scheme*, 1995, p 453.

⁷² Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, page 1.

⁷³ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, Annex 2 and 3.

⁷⁴ TemaNord 2001:522, *Utvärdering av den nordiska miljömärkningen, Svanen ur konsument- och miljöperspektiv*, page 30.

⁷⁵ TemaNord 2001:522, page 56.

labels, open consultation is one of the key features. If comments on the draft will be considered, the risk that consumers will lose their confidence in the scheme is smaller, though the meaning of the chosen expression is quite indistinct. Never the less all documentation (not including documents that are covered by the confidentiality exception) originating from the criteria setting procedure is to be accessible to the public.⁷⁶ It has been suggested at the Nordic level that the reasons to the choice of product groups will have to be communicated in the future.⁷⁷

Applicants need to provide independent documentation through tests on the conformity of their products with labelling criteria. In addition an independent third party inspection visit is carried out by the national organisation before awarding a licence. Independent environmental agents carry out periodic inspections.⁷⁸ These are not seen as exercise of authority (*myndighetsutövning*)⁷⁹ the labelling scheme being voluntary. Additional inspections are possible, and if process- and production methods still do not correspond with labelling obligations, the risk of withdrawal of the licence is imminent.⁸⁰

Eco-labels are most often protected trademarks. For the proper application of the Swan label, marketing rules are first examined through *Konsumentombudsmannen* and then if necessary, in court.⁸¹ Infringement of trademark regulations can be quite costly, 30% of the latest annual fee is paid in damages.⁸² The producer/retailer is also running a risk to get his licence or registration withdrawn.⁸³

In order to put Swan labelled products on the Nordic market, the products need to be registered in every country.⁸⁴ This register is accessible to everyone but some industrial secrets are to be kept confidential to the public.⁸⁵

⁷⁶ Nordic Eco-labelling Board, *Rules and procedures for the ecolabelling organisations*, 2001, point 14.

⁷⁷ TemaNord 2001:522, page 29.

⁷⁸ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, points 7 and 10.

⁷⁹ Prop 1994/95:101, pages 8f.

⁸⁰ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 9.

⁸¹ Lag 1975:1418, *Marknadsföringslagen*.

Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 9.

⁸² Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 9.

⁸³ Nordic Eco-labelling Board, *Rules and procedures for the ecolabelling organisations*, 2001, Part B, point 5.

⁸⁴ Nordic Eco-labelling Board, *Rules and Procedures for eco-labelling organisations*, 2001, Part B, points 3 and 14.

⁸⁵ Nordic Eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, point 2.

4 Europe's Environmental Flower

4.1 Basis

There are limits to EC legislation in areas that do not fall under its exclusive competence and the Community has to share its competence with member states.⁸⁶ When Member state action is insufficient in attaining the objectives and principles of the Treaty, the Community can intervene and regulate on the condition that this can be done more adequately (on a Community level). The question arises in transnational issues where it could even be in contradiction of the treaty to let member states regulate the matter on their own (or lack of Community action). Sometimes it is clear that Community action is more efficient and beneficial since the scope is much more far-reaching, involving all member states.⁸⁷ The reason why Community interference is perceived to be more suitable or even necessary has to be based on qualitative as well as quantitative considerations. Economic cost-benefit calculations are a useful tool in evaluating the need of Subsidiarity (as long as data used is reliable, see discussion on information).⁸⁸

Regulations are completely binding to all member states and directly applicable, they impose duties or confer grants to private parties. No national law can intervene in the stipulated means, methods or required results.⁸⁹ So while the Nordic Swan is a Nordic decision, the European label is somewhat stricter. Environmental regulations are exceptional, the Community favour directives, leaving the member states with some amount of discretion. However, indistinct and open legislation as directives are also causing most non-implemented Community legislation.⁹⁰

The Community's first principal objective was the establishment and functioning of the common market, though now environmental principles have to be integrated in all Community decisions.⁹¹ The idea of a European eco-label was born in 1987 and came into force 1992.⁹² At its 325th Plenary Session (meeting of 27 April 1995), the Economic and Social Committee unanimously adopted the following Opinion;

⁸⁶ EU Treaty, Article 5.2.

⁸⁷ European Environmental Law Review, January 1998, page 20.

⁸⁸ Scott, J., *EC Environmental Law* (1998) Environmental Law Series, London, pages 11ff.

⁸⁹ EU Treaty, Article 249.

⁹⁰ European Environmental Law Review, January 1998, page 21.

⁹¹ EU Treaty, Article 2.6.

⁹² Council Regulation (EEG) 880/92 of 23 mars 1992 on a Community eco-label award scheme, Article 1 note 8, drafts proposal 18/5 1990 OJ C 122/2.

*1.1.5. The Committee endorses this approach, and feels that it is time for a stronger reliance on market-based instruments (point 1.3) in order to ensure that other policies take greater account of environmental considerations.*⁹³

Actually, environmental regulations are exceptional, the Community favour directives, leaving the member states with some amount of discretion. The heart of Community law is its objectives,⁹⁴ environmental principles making part of them, while legislation and goals based upon principles create the basis of Nordic regulations. These principles are found throughout practically all environmental law. Keeping in mind the geographical differences and other national and regional particularities, environmental regulations are in general drafted as framework legislation

The ultimate goal of the EU is to make the flower the **only** label of its kind for all Member states, replacing national labels as Germany's Blue Angel and the Nordic Swan. A strategy has been worked out, the objective being to get a market penetration of EU eco-label products to up to 30%.⁹⁵ The Community is aware of the fact that there is little knowledge about the label in member states, one of the reasons the label has not been very successful. With the introduction of the latest Working Plan, hopes are high that the label's efficiency will improve.⁹⁶ In the struggle for integration it is clear that if the EU eco-label is functioning according to its objectives, the scheme can serve a purpose in offering relevant, correct and scientifically reliable information. The former EU eco-label has not been able to achieve the desired impact and hopes are high that with the new support from other policy areas and the revised regulation the outcome will be more satisfactory. In the revised EU eco-label the relation to animal welfare and occupational health has been clarified.⁹⁷

Recently a marketing and visibility campaign have been initialised holding the ambition to increase knowledge about the Eco Flower.⁹⁸ Already interest in the scheme is increasing. By now it is possible to find labelled products in mainly two wide product groups, namely textiles and paint and varnishes. Environmental improvement is still noted, given that 17 million Eco Flowered articles were sold.

⁹³ OJ C 155, 1995 P. 0001.

⁹⁴ As with all EU objectives there is not really a way to legally enforce these principles, since they are only "objectives".

⁹⁵ Draft ENV/2001/00046, page 10.

⁹⁶ Draft 24 September 2001, ENV/2001/00046, Commission Decision of [...] establishing the Community eco-label working plan, Annex.

⁹⁷ European Environmental Law Review, *Amsterdam, the Intergovernmental Conference and Greening the EU Treaty*, January 1998, pages 17f.

⁹⁸ Draft ENV/2001/00046, chapter 2.

ENDS Report 324, January 2002, page 27.

4.2 The Operational approach

4.2.1 Composition and Transparency

The Commission is elected in a democratic way by the governments of the member states, and it is the Commission that initiates the labelling procedure. Since citizens in each member state elect governments, one can say that even ordinary people participate in choosing the party whose policy they prefer.⁹⁹

The Competent Body is supposed to guarantee a sufficient amount of transparency and *active involvement* of all interested parties on a national level ensuring neutrality and independence.¹⁰⁰ When choosing members of the Competent Bodies, member states have to prioritise the body's independence and neutrality¹⁰¹ for instance the members' professional activity. Italy can be mentioned as an example, Italian ministers (environment, health, treasury, industry) appoint the various members of the Competent Body from different sectors.¹⁰²

The Consultation Forum represents commerce and environmental protection; the Community is striving for a balanced participation of the interested parties in question.¹⁰³ Under the old EU eco-label scheme the consultations were merely consultative, the Consultative Forum could not adjust the draft criteria¹⁰⁴ under the revised regulation the Consultative Forum takes part in the criteria setting procedure.¹⁰⁵

According to in. 14 in the preamble, the European Eco-labelling Board allows an objective and effective contribution in standard setting. The involvement of this body provides efficiency and neutrality. Consisting of the Competent Bodies and the Consultation Forum, the participation of the European Eco-labelling Board means that relevant interested parties also contribute (taking for granted that relevant parties **actually** have been chosen). In addition, the participation of manufacturers in this process will result in closer collaboration and sharing of information when it comes to environmental improvements of process- and production methods.

⁹⁹ Reg (EC) 1980/2000, Article 6.2.

EU Treaty, Article 213.

¹⁰⁰ Reg (EC)1980/2000, Article 14.

¹⁰¹ Reg (EC)1980/2000, Article 14.2 (a).

¹⁰² OFFICIAL JOURNAL NO. C 009, 1 September 1996 P. 0027.

WRITTEN QUESTION E-2303/1995 WQ by Ursula Schleicher (PPE) to the Commission (1 September 1995) (96/C 9/53).

¹⁰³ Reg (EC) 1980/2000, Article 15.

¹⁰⁴ Reg (EC) 1980/2000 Article 6.

¹⁰⁵ Reg (EC) 1980/2000, Annex IV 1.a.

4.2.2 Setting criteria

An important factor in the establishment of criteria is the environmental impact the product will have throughout all stages in its life cycle, products are thus compared on their function level. In the new revised regulation it is the Commission or the European Eco-labelling Board who starts the procedure¹⁰⁶ by suggesting product groups while the European Eco-labelling Board carries out the life cycle assessment. A feasibility and market study connects the product group to market- and technology development. The Community is convinced that an increase in visibility¹⁰⁷ will result in more sales.

In certain sectors innovation and technology are more promising in finding ways of reducing the environmental impact. Due to financial constraints and efficiency questions it is preferred to conduct the life cycle on these products primarily, assuring a positive result. When an appropriate product groups is found, all related processes for all related products must be identified to obtain information on all possible impacts.¹⁰⁸ The product group must be defined as to ensuring that all included products serve a similar purpose or have an equivalent use in the eyes of the consumer¹⁰⁹. The scope of the product group outlines which products are suitable for the label. To be chosen for labelling, the product must have a considerable impact on environment, which can be reduced by consumer choice.¹¹⁰

Then follows the inventory analysis, where key issues are identified and research is continued. The selection of key topics is fundamental; they decide the scope of future criteria. All data has to be well prepared, justifiable and comprehensive. Old data, new aspects on research and even unconventional views are used to achieve a high-quality analysis. When combining different sources, it is more certain that high quality criteria are obtained. These criteria are covering as many aspects as possible and are considered to be more appropriate.

A cradle-to-grave-approach applies many different criteria to examine the consequences on matters such as air, water, soil and disposal. (There are labels that have a great consumer impact even if they are concentrated at a single environmental feature, for instance the German 'Blue Angel'.) A lot of information is required to carry out a life-cycle evaluation of a product.¹¹¹ To determinate criteria an impact assessment is made. Classifying the environmental burdens and allocating them to their respective area is the first phase. A private scientific

¹⁰⁶ Reg (EC) 1980/2000, Article 6.2.

¹⁰⁷ Draft ENV/2001/00046, page 10.

¹⁰⁸ Företagshandboken, chapter 11.4.

¹⁰⁹ European Environmental Law Review, January 1999, page 7.

Reg (EEC) No 880/92, Article 5(3).

¹¹⁰ Reg (EC) 1980/2000, Article 2.2 and Article 3.

¹¹¹ Zarrilli, S., Jha, V., and Vossenaar, R., *Eco-labelling and International Trade: The Main Issues*, United Nations Conference on Trade and Development, New York, 1997 page 22.

organisation (SETAC) has established standards for life cycle, the 'Code of Practice'. This basic list of impact categories helps the European Eco-labelling Board in the classification process. After specifying the impacts in different categories (characterisation) a valuation is made. Not uniquely based on scientific but also social concerns the categories are assessed and compared against each other. The precautionary principle is employed. In some cases it is necessary not to await the results of time-consuming research and studies that prove the presence of certain environmental impacts but to continue the process even if full scientific proof is not yet at hand. Then follows the interpretation where the goal of the life cycle is compared to the result of the study and then validated. An improvement assessment is carried out where available options are ranked.¹¹² The potential of environmental improvement should be an important part in the selection.

Problems may occur when production is being made in facilities that do not use environmentally friendly energy sources or when transportation result in the impairment of the environment. The question is how far reached the life cycle should be. Furthermore, through a correct life cycle the shifting of pollution from one media to another is prevented, keeping the integration principle in mind. It will also support decision making in supplying information. Foreign manufacturers cannot at all times be present and active in the criteria-setting process.

The parties have to reach consensus throughout the whole process. This can lead to some problems.¹¹³ Not only is the process time consuming as such, but if every interested party have opinions that measure equally the intention is fair but if parties disagree negotiations will take place and finally criteria may not be as high as it could have been. On the other hand, the decision will be deeply rooted and widely accepted.

Environmental impact is more difficult to predict and determine than economic gain or loss. The long-time evolution and new scientific research can actually end up in showing that "perfectly safe" products/processes where in fact hazardous.

4.2.3 The European Approach to Open Consultation

Through knowledge and information individuals will be aware of their possibility and ability to interact in the drafting of criteria. Consequently they will feel personally engaged in environmental issues and confidence will raise, this being fundamental when making eco-labels efficient since their function is to change behaviour.¹¹⁴

¹¹² Committee on Trade and Environment: *Non-Paper by the European Community*, 1996/07/24, Item 3(b) Eco-labelling schemes.

¹¹³ Reg (EC) 1980/2000, Annex IV, point 1.

¹¹⁴ Solér, C., *Ecologically Friendly Buying- theoretical implications of a phenomenological perspective*, GRI Report 1995 :2, page 13.

Under the European scheme the open consultation is available to everyone during 60 days and comments on draft criteria will be *taken into consideration*.¹¹⁵ Only in this case are opinions taken into consideration! Since this consultation-period occurs before the label is actually granted one might see the document as unfinished and according to Article 4(1)(b-c) in the Directive of the European Parliament and of the Council on Public Access to Environmental Information the request can be refused when dealing with an unfinished document. Observations are based on the published end-report. The interim document containing the results of the different procedures and considerations will also be available to concerned parties.¹¹⁶

It is quite remarkable that access to documents on the process is available and that consultation is required. This suggests that the development of Union policy and procedures is important, trying thus to make the system efficient does not automatically imply that the assessment of product groups is swift. It is possible, and even likely that there are experts whose useful opinions and knowledge will only be taken into consideration¹¹⁷ since they are not considered as 'interested parties'. Such scientific, technical and legal facts could facilitate the labelling boards' workload and should at least be taken into account. Consultations with interested parties can without doubt facilitate implementation later on since the concerned parties had the opportunity to participate and get acquainted with the programme and its objectives. The problem is that the procedure is known to slowing down the process, further, lobbying (at times even aggressive) is very common endangering the objectivity of the legislation since certain issues, and not necessarily the most important ones, will be more emphasised.¹¹⁸ The EU eco-label was revised last year on these matters in order to make it more streamlined and transparent. The intention was to avoid subjectivity.

4.3 Review

As in the Nordic regulation, an independent body handle the functioning of the program, ensuring neutrality and transparency. Stakeholders hold the right of participation and can thus control the scheme. The principles of direct effect and superiority of EC law bring about a guarantee. The regulation has to be part of member state law, but at the same time producers are not obliged to apply for the label. Further, Art 18 of the labelling regulation states that in case of non-compliance the member state is held responsible for taking measures.

¹¹⁵ Reg (EC) 1980/2000, Annex IV 2 (b).

¹¹⁶ Reg (EC) 1980/2000, Annex IV 2 (a).

¹¹⁷ Reg (EC) 1980/2000, Annex IV 2 (b).

¹¹⁸ European Environmental Law Review, January 1998, page 21.

When importing products from countries outside the Union, the monitoring of compliance with required standards, production methods and issues on labour is more complicated. The solution is to provide producers with references for testing and evidently the same method is used when it comes to considering and assessing the application regardless of its origin. The contract includes terms of use and regulates fees and cost.¹¹⁹

Since both eco-labelling schemes are used as tools to realise different national and international environmental goals, the national reporting systems will actually review the functioning of the labels.

4.4 Application

In the European scheme the same rules are valid for everyone. Non-member states are better off after the revision of the regulation. The opportunity to apply directly for own brand products is now open for traders and retailers.¹²⁰ The precedent regulation was criticised on certain issues and giving non-EU exporters the right to apply directly to a Competent Body remove some of the critic.

With the issue of expanding the Union eastwards, the disparities between member states will become even more obvious. When a EU member state is encouraging its citizens to buy eco-labelled goods while participating and funding the most known national label, they run a risk to be bias. In addition, citizens often prefer buying nationally labelled products. When an eco-labelling scheme is depending on the good will and deep pockets of its country and the financial subsidies are vital for its survival, the independence of the programme might be questioned.

The EU eco-label has a license fee of 0,15% of the annual sales volume and a reduced fee by 25% for SMEs and for producers from developing countries. According to international environmental provisions, concern with those groups has to be taken. Further, the annual fee is only to be paid to the Competent Body that awarded the licence.¹²¹ Though in both programs testing, verification and documentation is to be paid by the applicant.¹²² More about inspection costs will be discussed in the next chapter.

¹¹⁹ OJ C 009, 1 September 1996 P. 0027, Written Question E2303/95.

¹²⁰ Reg (EC) 1980/2000 Article 7.1-2.

¹²¹ EC Reg 1980/2000, Annex V, point 1.

¹²² EC Reg 1980/2000, Annex V.

Nordic eco-labelling Board, *Regulation for Nordic eco-labelling of Products*, 2001, points 1, 7, 10.

5 Choosing between national labels and the European Flower

5.1 Aspects in favour of harmonisation

Principle 12 in the Rio Declaration states that, unilateral actions in questions concerning the international environment should be avoided since international co-operation is preferable.

The presence of all sorts of private, national, single or multi criteria label causes considerable confusion amongst consumers and distortions in the market place.¹²³ The vast amount of different labels, from very strict and respected to more or less suspected ones, may end up in suspiciousness among consumers and manufacturers. Furthermore, environmental standards impose substantial costs upon industry (including production process standards).¹²⁴ Significant disparities between the national regulatory practices of member state would lead to a distortion of competition, which negatively affects the functioning of the common market.¹²⁵ When the regulation is supposed to be functioning alongside internal and well-known labels, the disparities will still be present, affecting competition and the internal market.

There are essentially two outcomes in this case, depending on which competitive reason is used.

If certain states consistently strive for higher standards for their **own** eco-label, then the EU eco-label will become a second-degree label. When only some states' environmental protection issues are of current interest, differentiation is sought. In adjusting themselves to common standards, the second competitive reason, member states can even end up in adopting less stringent standards than normally. The environmental gain in this method is obviously smaller.

To attain (one of) the Community's principal objectives; an internal market, harmonisation of all legislation that may affect or hinder this goal is necessary. The question arising is why the Community allows national labels and simply ensures co-ordination between the two. A wide variation of national standards affecting the internal market and competitiveness is hardly the result the Community had in mind. According to the regulation, the European label is supposed to 'take over' in a near future, but as for now, co-ordinated co-existence is inevitable. Since any

¹²³ *Environmental Labelling- Issues, Policies and Practices Worldwide* (1998), page B-32.

¹²⁴ Scott, J., (1998) pages 13f.

¹²⁵ Case 92/79 Commission v Italy [1980] ECR 1115, para.

EC regulation on environment that touches a subject being regulated in the Swedish Environmental Code, EC Law precede member state law.¹²⁶

Many Nordic consumers express their concern when asked about the replacement of the Nordic Swan by the Eco-Flower. Here it is interesting to see that when the Flower was introduced in Denmark in 1997, 18% of consumers recognized the label and in 2000 the amount had increased to 29%.¹²⁷ The Danish are now ready to pay 10% to 17% more for Swan-labelled toilet paper.¹²⁸ This indicates that when introducing a new label, recognition can quite rapidly be attained provided that rules and marketing are properly managed.

The result of the harmonisation attempts is rather an approximation of legislation to avoid differences between member states, while harmonisation of environmental laws is done to obtain integration.¹²⁹

5.2 Reasons to keep national eco-labelling programs

The great popularity of the Nordic Swan and its environmental benefits could be jeopardised by the change into the EU eco-label.¹³⁰ In keeping co-ordinated national labelling programs the success (that is, the preference for labelled goods and services) may be bigger. National programs have clearly contributed to improve the environment. Without implying that the Eco-Flower will not, criteria and standards are set higher in certain countries since more attention is paid to environmental issues.¹³¹ Keeping in mind the geographical differences and other national and regional particularities, each Member state is more suitable to make sound labelling decisions.¹³²

It takes up to a few years before a product-group and its criteria are completed. Negotiations and compromises are necessary already at the national stage, even the Nordic countries can not always agree upon their shared policies. Imagine the difficulty and negotiations necessary to reach consensus on a European level. A program that is not efficient and streamlined runs a risk of losing participants and once again, credibility.

¹²⁶ SFS 1998:808, *Miljöbalken*, 1ch 6§.

¹²⁷ Bue Bjørner, T., Gårn Hansen, L., Russell, C. S., and Olsen, T., *The Effect of the Nordic Swan Label on Consumers' Choice* (2002), AKF Förlaget, page 18.

¹²⁸ Bue Bjørner, T., (2002), page 64.

¹²⁹ European Environmental Law Review, June 2000, page 18.

EU Treaty, Article 94.

¹³⁰ TemaNord 1999:592, pages 54, 55, 58.

¹³¹ European Environmental Law Review, June 2000, page 175.

¹³² Stockholm Declaration, Principle 23.

Even if the Nordic Swan was introduced during the same period as the EU eco-label, the popularity of the Nordic programme is more widely accepted. Consumers in Nordic countries tend to be more positive to this label, stating different reasons for their suspiciousness towards European standards.¹³³ Moreover, it seems as if the Nordic Council of Ministers is not in a hurry to abolish the Nordic Swan. According to the latest evaluation, there are no forthcoming plans to replace the popular Swan.

Competition between different labelling programs can actually increase the quality of labels. A broader life cycle and more stringent standards is a competitive advantage. Other ways of getting market advantages is competing on credibility, the choice and involvement of interested parties and experts and the criteria setting process.¹³⁴ Having several labels competing the individual choice is wider, though a 'jungle' of schemes can prove to have opposite effects in causing confusion and discouragement from choosing labelled products.

¹³³ TemaNord 1999:592, pages 32, 43, 54.

¹³⁴ Karl, H., and Orwatt, C., *Environmental Labelling in Europe* (1999) European Environment 9, page 213.

6 Free trade and eco-labels

6.1 Competition and barriers to trade

The objective of the Nordic Swan is the protection of the environment, reliable consumer information and the possibility of changing consumption patterns.

According to its preamble, the scope of the EC eco-label embraces the internal market as well as the environment. One of the problems emerging from this double objective, the whole process of setting environmental standards and the compliance with environmental principles, has already been discussed. The consequence of eco labels' impact on trade is thus as important as its effect on the environment.¹³⁵ It can raise questions about anti-competition (where imported "like products" has to be treated in the same way as domestic ones) and barriers to trade (such as quotas, embargoes and various licensing schemes.¹³⁶ The rules on trade barriers in EC law do differ from the provisions in the GATT and the Technical Barriers to Trade Agreement (TBT), but many similarities can of course be spotted. As an example, environmental measures alleged to be violating general GATT regulations could be justifiable under GATT Art XX (b) and (g) where the right to exception is given. However, in the case of GATT the concern for the relationship between international trade and the environment is quite recent.

Eco-labelling can be an effective way of promoting certain products and the participation of different actors. But the line between arbitrary protectionist measures and environmental concerns is thin.

With the appearance of eco labelling legislation some change in trade patterns and process- and production methods must be expected. This change can be beneficial and lead to considerable pollution abatement as long as environmental objectives are fair and appropriate, not imposing a too big threat on trade. Voluntary eco labels are not in them selves discriminatory trade measures, but influencing consumer behaviour, consumption, producers and service providers they may have the effect of trade barriers.¹³⁷

The most important principle in the right to set up environmental measures is non-discrimination (imports, exports, country etc.)¹³⁸

¹³⁵ All objectives have to be treated equally, even if they at times can be competing. Case C-3000/89 *Commission v Council*, [1991] ECR 2867, *Titanium Dioxide* case.

¹³⁶ General Agreement Tariffs and Trade, Article XI and Article III.

¹³⁷ Zarrilli, S., ed. (1997), page 170.

¹³⁸ This principle is applied both on national, regional and global levels.

6.2 Impact on the Internal Market

Many member states make an attempt to differentiation, putting environmental protection higher than the Community. Developments and innovation in science and technology is becoming more and more rapid, a member state whose environmental politics is motivated by a high profile on innovation may find that these rules are not sufficient and will prefer to boost their own eco-label. A country that wants to introduce (or keep) tougher standards has to make sure that these are compatible with Community regulations.

Invoking more stringent measures for their eco-labels is allowed according to the regulation and will result in different outcomes. If manufacturers decide to apply for the national eco-label, consumers are aware that this product is “better” than products carrying the Community label and will thus choose the former, leaving imported EC-labelled merchandise as second-class alternatives. Even if all producers, national as foreign can apply for the label at the same basis, this can lead to market advantages for the national manufacturer. Initially, acquaintance with national requirements and standards will be indispensable. Subsequently importers will be obliged to submit an application in each country where more stringent eco-label criteria is used, if they intend to keep up with competition. Additionally, the Union is supposed to be one single market not allowing distortion in competition, and national labels are more often conceived as unfair from an importing state’s point of view.

If the producer goes for the European eco-label, intending to sell his products all over the EU, he runs a risk to lose market shares rather than gaining since, first: the products will be more expensive than non-labelled products and second: the products are not as environmentally friendly as the nationally labelled ones. It is not surprising that the Union has taken the decision to raise consumer confidence for the Eco-Flower, the aim being one single European label.

The summit on Sustainable Development in Johannesburg, South Africa (ten years after the Earth Summit in Rio de Janeiro)¹³⁹ is approaching and the Community is preparing its position. In the future each actor and every sector is supposed to come together and support global companionship. Through sharing of information and experiences, joint measures will be endorsed.¹⁴⁰

¹³⁹ The meeting is held between 26th August and 4th September 2002.

¹⁴⁰ Council Meeting 2413-environment, Brussels 4th March, 6592/02 (Press 47), point 15.

6.3 Global trade issues

6.3.1 Possible conflicts

The first conflict may occur already when characterising the concerned label. The TBT Agreement makes distinctions between different types of labelling, mandatory labels fall under 'technical regulations' while voluntary programs are considered as 'standards'.¹⁴¹ Technical regulations cannot be more trade restrictive than necessary; this additional requirement does not apply to standards.¹⁴² Still the Code of Good Practice will be applicable on voluntary labels, requiring member states to ensure that national standardizing bodies do not establish standards that are discriminatory nor prepared, adopted, or applied with the effect of creating an unnecessary obstacle to trade.¹⁴³

Keeping in mind that unilateral measures are inadvisable¹⁴⁴ it is not surprising that the Code encourages extensive harmonization based on international standards where the basis is made out of performance characteristics and not product-design. The standardizing body is encouraged to keep work programs containing procedures in regular publication of the different stages in the development of draft criteria. Before adopting a standard, comments from interested parties has to be taken into account. These opinions can be submitted during a minimum period of sixty days and have to be taken into account.¹⁴⁵

Another possible conflict may arise between the life cycle approach used to establish product criteria in labelling programs and existing GATT prohibition of trade restrictions based on process- and production methods.¹⁴⁶ Evidently, eco-label criteria cannot be neither discriminating nor a disguised barrier to trade.

It is not yet clear weather labels based on both product related and non-product related process- and production methods in standard setting are covered by the TBT.¹⁴⁷ However it may be, there are nonetheless some general obligations in

¹⁴¹ Agreement on Technical Barriers to Trade (TBT), Annex 1, points 1 and 2, where standards are '...document[s] approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory.'

¹⁴² TBT Agreement, Article 2.2 and Article 4.

¹⁴³ TBT Agreement, Annex 3 *Code of Good Practice*, point G.

¹⁴⁴ Rio Declaration, principle 12.

¹⁴⁵ TBT Agreement, Annex 3 *Code of Good Practice*.

¹⁴⁶ *Environmental Labelling- Issues, Policies and Practices Worldwide* (1998) Prepared for The Pollution Prevention Division, US Environmental Protection Agency, page B-37.

¹⁴⁷ When environmental damage is related to the consumption of the product the process- and production methods will be categorized as Product-related, while environmental harm linked to the production process as such is associated with Non-Product related methods.

GATT that need to be respected, the principle of ‘most favoured nation’¹⁴⁸ and the national treatment principle¹⁴⁹. Additionally, non-discriminatory implementation of the labelling scheme and the opportunity of equal participation of all member states appear necessary. Programs that impede the selling of non-labelled products will hardly be accepted. As long as distinctive elements in process- and production methods are not protective of domestic products on the detriment of imported ones and the advantage gained when labelling is the result of the free choice of consumers and not government¹⁵⁰, eco-labels surely cannot be considered as violating the provisions of the TBT Agreement. The boundaries of such requirements are always difficult to set, but clearly too costly programs, obligations that are impossible to full fill, insignificant participation and unattainable access to the program are all factors considered to be against the GATT provision.¹⁵¹

To examine the international provisions’ effectiveness in attaining sensible environmental law goes beyond the scope of this essay, nevertheless both labels unmistakably affect international trade so their impact has to be considered.

International issues are treated in the European program; in the revised regulation, EU eco-label provisions concerning non-member state imports have been simplified. The application process is facilitated and participation in criteria setting is possible to some extent.¹⁵² Tests and verifications performed by bodies according to the EN 45000 standards are to be admitted.¹⁵³ In the Nordic Swan specific provisions concerning developing countries are non-existing, the label is primarily seen as a regional label.

The two labelling systems are products of cooperation between states where disparities are not too significant. The problem of globalisation is, among others that countries differ from one and other, not only the striking difference between developed and developing countries but also geographical qualities and dissimilarities. Of course one can argue that great differences will be encountered in comparing Portugal to Sweden, but this is put in another light when Sweden is being compared to an Eastern European or a developing country. Even if eco-labels are not supposed to be discriminating nor an obstacle to trade, a state’s industry that do not possess the same possibilities to invest can argue that the labels are used as hidden barriers to trade. In order to cooperate, actors need to feel they have similar objectives. Encouraging European consumers to buy labelled goods and services will eventually result in a smaller demand for imported

¹⁴⁸ GATT, Article I that requires all members to treat products from other members in the same manner.

¹⁴⁹ GATT, Article III, equal treatment of national and imported ‘like products’ in order to avoid preferential treatment of members’ own production.

¹⁵⁰ Tuna/Dolphin Case I.

¹⁵¹ GATT Doc No TRE/W/3, 29th September 1992.

¹⁵² EC Reg 880/92, Article 6, 7, 15 compared to EC Reg 1980/2000 Annex II.

¹⁵³ EC Reg 1980/2000, Article 7.6.

non-labelled products. On the other hand, letting disadvantaged states keep on 'business as usual' will definitely entail certain risks even for developed countries, the environmental problems are as global as pollution.

Voluntary eco-labels can in the long run balance the environmental burdens that lie upon a country. Industry can oblige their suppliers to meet the standards of the importing country, something a national government is not able to demand from foreign manufacturers. Most underprivileged countries are forced to invite sectors of industry that no longer are wished for in the western world. They will thus draw indirect benefit from the regulation when changing process- and production methods to comply with eco-label rules; environmental problems will be less severe.

6.3.2 Dealing with developing countries

Some scholars mean that in order to prevent developing countries' loss of market shares in exports, one should avoid the question of raw-material extraction and other process related standards in product criteria.¹⁵⁴ Keeping in mind the benefits developing countries may get in an environmentally friendlier industry, this proposal does not seem to fit in with the concept of sustainable development. If these countries are given the opportunity to participate actively in the standard setting procedure, their control over domestic natural resources will increase. Additionally, national experience in and understanding of the distinctiveness of their territory and environment will most likely result in more appropriate standards. Further, consumers' trust in eco-labels will rise when knowing that the whole life cycle is examined.

Still there is an even bigger problem: poverty. As long as developed countries do not take their responsibility to help less fortunate states financially or technologically in the amelioration of process- and production methods, progress will be very slow. In many developing countries a decline in exports will provoke terrible disaster but once the environment is destroyed, they will be helpless.¹⁵⁵ Moreover, former colonies fear the possibility of once more being exploited by developed countries. International environmental negotiations have a tendency to be held between two camps; their suspicion results in the following conclusion; since the environmental issue is of such weight to 'us' then consequently it must hurt or hinder 'our' interests.¹⁵⁶ If these states were to consider their advantage of greening industry at least as big as the supposed western world benefits, then participation is to be expected. Technical assistance is one solution, while exemption rather will cause future problems.

¹⁵⁴ Zarilli, S., ed. (1997) page 30.

¹⁵⁵ Sands, P., (1993) page 104.

¹⁵⁶ Sands, P., (1993) pages 21ff.

Balancing economical, social and environmental concerns is indispensable, but even if several agreements indicate the use of the proportionality principle¹⁵⁷, most developing countries are still suspicious. They fear that their right to and capability of development will be restricted. When the demand for eco-labelled products increases, the competitiveness of non-labelled commodities will decrease which is especially affecting developing countries. This may seem unfair but keeping in mind that environmental damage is global and that those countries have not been spared, the benefits of labelling will eventually leave the most acute problems behind.

The EU provides aid to developing countries and exposed regions.¹⁵⁸ Sustainable development is not possible if not the entire planet is taken into consideration.

¹⁵⁷ TBT Agreement, Article 2.2.

Stockholm Declaration, Principle 12.

Rio Declaration Principle 6 and Principle 7.

¹⁵⁸ Kiss A., and Shelton, D., (1997), page 584.

7 Conclusion

It is likely that rules on environmental protection can constitute barriers to trade. The question is if eco-labels are an appropriate tool in balancing environmental, economic and social concerns. According to how rules on labelling are drawn, they can turn trade away from environmental concerns by enhancing the demand for non-sustainable production and process. However it can also lead to a more ecological approach, where the allocation of natural resources is done with sustainable development in mind. Eco-labels show consumers which product's impact (multi-criteria basis) on environment is the smallest compared to competitively and functionally similar ones and thus change consumption patterns. Even if the assessment procedure is supposed to provide a life-cycle approach, it is very difficult to track and supervise all stages and matters. The transport issue ought to be stated, because a product's impact on environment often occurs when it is being shifted between the different stages of its life. Even if a product's lifecycle is all right the importance of how it is put on the market is vital, especially when imported from distant countries. Still a complete life cycle analysis still seems utopian.

Without some benefits like economic gain and/or marketing advantages such as the improvement of the company reputation, no individual actor would envision participation in a labelling-scheme given the increased costs.

There are two major threats to the proper functioning and success of the programme. One problem being all companies that do not comply with the labelling-contract, making the environment suffer and giving the program itself a bad reputation. As a consequence consumers and industry will lose confidence and the label its credibility.

Targets that are set too low or that are simply unsuitable cause the second main problem.

Non-compliance, questions about interpretation of standards, licensing issues etc have to be solved efficiently. A voluntary program cannot be trustworthy without some sort of monitoring and control. Transparency and participation is not enough, if interested parties are convinced that the labelling is correct and that independent monitoring is conducted, the scheme will be more successful. That is why a system of follow-up, evaluation and reporting could be useful.¹⁵⁹ In the Nordic program the design of dispute resolution depend on each member country. For the proper application of labels in Sweden, marketing rules are first examined through *Konsumentombudsmannen* and then if necessary, in court. Transparency and participation is not sufficient, if interested parties are convinced that the labelling is correct and that independent monitoring is conducted, the

scheme will be more successful. When a EU member state is encouraging its citizens to buy eco-labelled goods while participating and funding the most known national label, they run a risk to be bias. In addition, citizens often prefer buying nationally labelled products. As a consequence consumers and industry will lose confidence and the label its credibility.

It is not always easy for eco-labels to gain authority when producers' sense of responsibility is low, there do not exist a way to produce environmentally sounder products or a part of the production phase lies out of hand.

Since consumers tend to be more or less convinced that industry are solely interested in profit, it is of great importance to gain credibility. Taking part in the process or merely having the opportunity to follow it, will increase confidence. The mere concern of environment and the survival of present and future generations is already a constructive step. If everyone feels personally responsible for the environment and its amelioration, then considerable positive change will take place. What matters is the meaning of expressions such as "active involvement" and "balanced participation". It is rather interesting to examine the formulation of these provisions since their language is quite non-judicial. From a legal perspective it is uncertain if these provision confer any **real** rights. Furthermore, the significance of the terms "take into account" and "taken into consideration" is rather different and somewhat unclear.

Some procedural principles have to be fulfilled to ensure proper and sustainable implementation and use of eco-label- regulations.

1. Clarity

The chosen language has to be clear-cut and explicit at all stages to simplify implementation and compliance.

2. Communication/Interaction

It is now apparent that the success of the regulation depends in a large extent on individual action that in turn has to be based on sound choices. These choices are only possible if communication is achievable throughout the process. Exporting countries should be able to contribute in the criteria-setting procedure, foreign input can be vital in achieving correct criteria.

3. Transparency

Increases trust and as a result the rule in question becomes more prestigious. There are different stages where transparency (and participation) is attractive, the selection of product groups, setting criteria (public and NGO opportunity to participate), influence and review.

4. Popular participation

To start with, democracy is not possible without public participation. Secondly, when allowing key-actors participate, problems and issues based on reality and everyday experience are structured.

5. Information

Allow participants to be enlightened and give them an opportunity to make sensible choices. Information does not serve if it is misleading or inaccurate. The

weight put on certain impacts exclusively (not necessarily the important ones), information that is concealed, incorrect facts and data etc. are all situations that render decisions unsound because of the incorrect basis.

6. Accountability

No law is perfect. To ensure future adjustment, modification and improvement feedback is a necessary element; a monitoring and reporting system can be useful in this event. A mechanism for dispute resolution and sanctions for non-compliance should be modelled to further facilitate the proper functioning of the scheme.¹⁶⁰

7. Funding

Being independent from commercial interests the integrity of the programme is maintained. Needless to say, the scheme should be run by a non-profit organisation.

Sectoral approaches are avoided in a large extent trying to accomplish European harmonisation. Several co-existing schemes can create consequences not only for consumers but also for producers and importers in the areas of information, costs etc. The European ambition is to provide consumers and manufacturers with an *effective single European label*. A totally harmonised European legal system might be one way in obtaining sustainable development, but then decision-making has to be co-ordinated and integrated. This is rather an unlikely scenario given the constraint and differing view on trade and environmental issues of certain countries. Otherwise co-existing national environmental acts can actually be more efficient if making part of a bigger integrated system. The key is not necessarily harmonisation but rather the functioning and substance of the regulation and the quality of environmental performances.

It is interesting to examine how global trade issues are considered and to what extent there is real concern for international trade, developing countries, etc. It is understandable, given the developing country problem, that European countries can be criticized for concentrating environmental measures regionally. Even if the eco-labels in question are voluntary, regulating on process- and production methods (and Process Methods in particular) can easily be interpreted as a disguised barrier to trade. It is possible that mutual recognition or harmonisation is a better way of attaining sustainable development. Previously a division was made between economic growth and the protection of the environment. Nowadays it is quite clear that economic prosperity and its developing depend on environmentally sustainable development. The necessity to no longer separate economic prosperity from resource use and other environmental concerns should by now be apparent for most decision-makers. Through agreements and global co-operation it will be easier to achieve environmental goals without inhibiting free trade issues. But consensus needs to be reached between producing and consuming countries. Because of the various environmental, political, social and

economical problems in certain countries abiding by Western rules will be cumbersome and the suspiciousness is not surprising. If the consuming country provides technical assistance and knowledge about environmentally more beneficial process- and production methods and producing countries share their knowledge of their country's particularities, co-operation might be fruitful provided that transparency and participation is possible. The key factors should be the agreed international principles. If all states work with the same principles at hand success will eventually come about. Maybe in using ISO standards and guiding principles to avoid the risk of discriminatory regulations, a larger number of products will be labelled making environmental benefits more obvious

Multiple eco-label programs run a risk of causing producer and consumer confusion, but given the advantages of individual recourse to choice and the smaller impact on environment, the threat is not important enough to jeopardise the schemes' objectives. In addition monitoring, control and most important transparency and public participation are significant for the proper functioning. Being voluntary the schemes survival depends on producer and consumer confidence, possible success also depend on other factors such as human effort and knowledge. If citizens' behaviour and action is crucial, then the results are no longer the responsibility of the state but of individual and collective engagement. In this case, if no incentives exist, the realization of the schemes' objectives may be threatened.

Contrary to prohibitions; taxes, restrictions on individual activity and information provisions do not reduce consumption, but change the behaviour of consumers. The environmental improvement created by eco-labels is clear, but constitutes hardly a permanent solution given that consumption will still continue to rise. It is the consumption in it self that has to be reduced, however changing habits takes time, especially when this means the habit of an entire planet. Meanwhile, the impact on environment will at least be reduced.

Keeping in mind the Eco-Flower objective of only one single European label, this proposition seems strange. Even if the research conducted within the frame of the Nordic Swan can be used at a European level, it cannot be taken for granted that the two provisions have the same standards. Given the long-term objective of one single European label, national organisations should rather put their resources on the development of the European label to achieve high-quality criteria and boost consumer confidence. When the Swan eventually has to step back in favour of the Eco-Flower, Nordic effort, time and money will not have been wasted in vain since work developing new criteria has been conducted for and concentrated on the Flower scheme, which has a longer lifespan. The national organisations should rather put its resources on the development of the European label to achieve high-quality criteria and boost consumer confidence.

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