

Market-based Environmental Policy: Building WTO Compatibility



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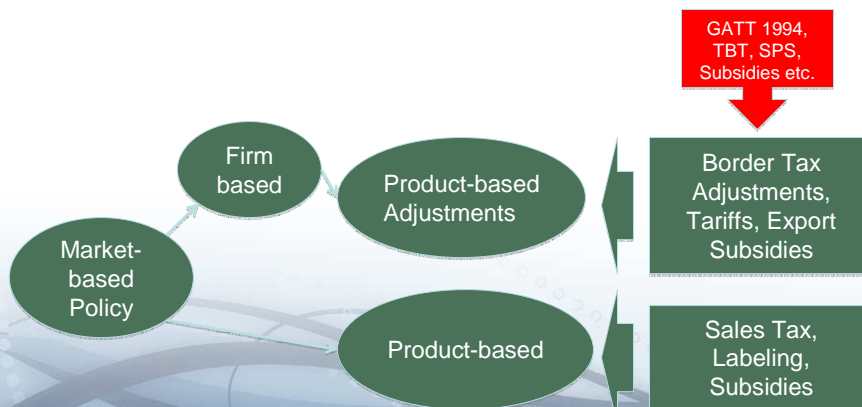
Definition and Rationale for “Market-Based” Environmental Policy?

- **Definition:**
 - Market-based instruments seek to address the market failure of 'environmental externalities' either by incorporating the external cost of production or consumption activities through taxes or charges on processes or products, or by creating property rights and facilitating the establishment of a proxy market for the use of environmental services. (OECD, 2007)
- **Rationale**
 - **Economic Efficiency:** Static and Dynamic efficiency are promoted through market-based policies
 - **Political Efficiency:** Domestic policy with reach beyond national borders

Three Types of Market-based Policy

Price-based	Rights-based	Market friction
<ul style="list-style-type: none"> • Emission charges • User charges • Product charges • Performance bonds • Non-compliance fees • Subsidies (materials and financial) • Removal of perverse subsidies/taxes • Deposit-refund systems 	<ul style="list-style-type: none"> • Tradeable permits, rights or quotas • Offset schemes 	<ul style="list-style-type: none"> • Reducing market barriers • Extension / education programs • Research programs designed to facilitate market exchanges • Labelling • Information disclosure

The Confluence Between Market-based Policy and WTO Policy



Applying the WTO Framework to Market-based Policies

- Single Undertaking
 - Potential applicability of TBT, SPS, Agreement on Subsidies etc
 - Our focus: GATT 1994
- The "Non-product Related PPM" Question:
 - Market-based instruments seek to change behaviour which impacts the environment.
 - This implies, as per efforts to manage climate change impacts, alterations in processing and production methods
 - Effective market-based policy implies the use of instruments which will distinguish between products based on their non-product PPMs

GATT 1994: Cornerstone Obligations

- Prohibition of Quantitative Restrictions (Art. 11)
 - Covers import quotas, bans and other prohibitions on entry
 - In principle, market-based policies should naturally veer away from imposing quantitative restrictions
 - *Compatibility Strategy*: avoid bans and quantitative restrictions outright

GATT (1994): Cornerstone Obligations

- Equality of Treatment to "Like Products" (Art. 1 and Art. 3)
 - Report on Border Tax Adjustment Criteria: *physical properties; end use; tariff classification and consumer taste and habit*
 - In the 80s and 90s GATT case law focused on *product functionality to product competitiveness (Taxes on Petroleum, Reformulated Gas, Japan Alcohol)*
 - *With (Asbestos) the AB clearly placed the focus on "competitive relationships"--reasserts the importance of "consumer taste and habit" criterion*
 - **Compatibility Strategy: Build instruments on existing market distinctions and relationships (eco-label markets)**

GATT (1994): Cornerstone Obligations

- Article XX
 - Relevant headings:
 - (b)-necessary to protect human, animal or plant life or health
 - (g)-relating to the conservation of natural resources...
 - The Chapeau (Shrimp Turtle)
 - Extra-territoriality: ok so long as sufficient nexus
 - Must not result in unjustified or arbitrary discrimination
 - Unjustified if no effort made to find means of agreement
 - Arbitrary if not sufficiently monitored to ensure that applied consistently
 - **Compatibility Strategies:**
 - Keep policies as directly linked to the objectives of a particular heading
 - Limit environmental trade policy to environmental issues with global or trans-boundary effect
 - Use international standards processes as a basis
 - Leverage existing supply chain monitoring and evaluation systems/use science-based methods

Summary of Compatibility Strategies

1. Avoid quantitative restrictions
2. Limit extra-territorial effect to cases where there is a direct “nexus”
3. Build on existing market-based distinctions
4. Base on international standards and other participatory processes
5. Base policy on scientific evidence
6. Ensure that mechanisms have effective, accurate and fair monitoring systems

WTO Compatibility is Not a Sufficient Condition for Sustainable Market-based Policy

- Economic efficiency for reaching a specific objective may not be maximized by a particular market-instrument
- Market-based instruments may create inequities in access to markets-notwithstanding dictates of the WTO
- Market-based approaches, to the extent unilateral in character, might threaten more political, consensus-based solutions