

**Feasibility study on preferential tariffs
for sustainable produce**

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This report studies opportunities and constraints for preferential tariffs for certified sustainable products such as organic products, fair trade products, sustainable timber (FSC) or sustainable flowers (MPS). Through desk research opportunities for preferential tariffs according to present WTO agreements and recent jurisprudence were found. The international organisations working on sustainability standards, certification and accreditation were very helpful in the identification of potential constraints. The main conclusion of this feasibility study is that the idea of preferential tariffs for sustainable produce is promising, but needs further study before being launched into international fora. A first step to proceed with the idea of preferential tariffs for sustainable produce is to explore the opportunities for an unilateral approach based on a few products that create win-win situations inside and outside the EU.

WTO / agreement on agriculture / preferential tariffs / standards / certification / accreditation / organic farming / sustainable timber / sustainable fisheries / MPS / fair trade

Preface

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Of course only CLM is responsible for this report.

The authors,

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Abbreviations

AoA	Agreement on Agriculture (annexed agreement of the WTO)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EBA	Everything But Arms initiative
EU	European Union
Eurogroup	Eurogroup for Animal Welfare
FLO	Fairtrade Labelling Organizations International
FSC	Forestry Stewardship Council
GATT	General Agreement on Tariffs and Trade
GO	Governmental Organisation
IFOAM	International Federation of Organic Agriculture Movements
ILO	International Labour Organisation
LDC	Least developing country
MEA	Multilateral Environmental Agreement
MNF	Most Favoured Nations principle in the GATT agreement
MPS	MPS Environmental Floriculture Programme
MSC	Marine Stewardship Council
NGO	Non Governmental Organisation
PPM	Process and production method
RSPB	Royal Society for the Protection of Birds
WTO	World Trade Organisation

Contents

Preface

Abbreviations

Contents

1	Introduction	1
1.1	Background for this study	1
1.2	Study methodology	2
1.3	Structure of this report	3
2	WTO rules on process and production methods	5
2.1	GATT rules	5
2.2	Exceptions based on Article XX of GATT	6
2.3	Conditions for exceptions based on article XX b & g	8
2.4	Annexed agreements	11
2.5	Opportunity for derogation in the Agreement on Agriculture	12
3	Comments of international organisations	13
3.1	International organisations involved in this study	13
3.2	Methodology	14
3.2.1	The meaning of preferential tariffs for sustainable produce	15
3.2.2	Support for preferential tariffs for sustainable produce	15
3.2.3	Strength of standards, certification and accreditation programmes	17
3.2.4	Side effects related to standards, certification and accreditation	18
3.2.5	Side effects related to international trade	19
3.2.6	Side effects related to investments in sustainable PPMs	20
3.2.7	Who (should) benefit from preferential tariffs?	20
3.2.8	Who will oppose and who will support preferential tariffs?	21
3.2.9	Concerns with regard to developments in the WTO	22
4	Opening the debate	23
4.1	Topics for debate in the European Union	23
4.1.1	Goals	23
4.1.2	Level of sustainability	23
4.1.3	GO-NGO co-operation	24
4.1.4	Legal barrier	24
4.1.5	Inequalities between sustainable and conventional production	24
4.1.6	Costs and benefits	25
4.1.7	Multilateral or unilateral?	25
4.2	Important topics for countries exporting to the EU	25
4.3	Alternative approaches found during the study	26
4.3.1	National funds for the rural environment	26
4.3.2	Preferential quota for sustainable produce	27
4.3.3	Border tax adjustment	27

5 Conclusions and recommendations	29
5.1 Study objectives and methodology	29
5.2 Overall conclusion	29
5.3 Opportunities in view of present WTO agreements	30
5.4 Support from international organisations	30
5.4.1 Accreditation of certification programmes	30
5.4.2 Government and non-government co-operation	30
5.4.3 Favour sustainable production and consumption inside the EU	31
5.5 Robustness of standards, certification and accreditation	31
5.5.1 Assessment of the programmes	31
5.5.2 Diversity versus harmonisation	31
References	33
Annex 1 Conference paper	35

1 Introduction

1.1 Background for this study

In the European Union (EU) there is a growing demand for products that are produced with sustainable process and production methods. Different labels have been introduced to respond to this demand such as organic, sustainable forestry and fair trade. Sustainable produce is partly produced in the EU and partly imported from third countries. For example tropical timber, and fair trade coffee, tea and bananas. For the products that are also produced in the European Union the playing field with third countries is often influenced by import tariffs, production support and export subsidies. The EU policies on production support already differentiate between sustainable and conventional process and production methods. But the EU policies on import tariffs and export subsidies affect sustainable produce and conventional produce in the same way. If the Netherlands or the EU want to differentiate in its policies on import tariffs or export subsidies between sustainable and conventional process and production methods this may come in conflict with international agreements on trade rules.

The subject of this study is differentiation in import tariffs between sustainable and conventional produce, through preferential tariffs for sustainable produce. At this point in time the neither Netherlands nor the EU want to preferential tariffs for sustainable produce.

The justification to consider preferential tariffs for sustainable produce is expressed by Pete Hardstaff:

As a matter of principle, farmers, foresters or fishermen choosing to use sustainable methods of production should not be undermined by those choosing less sustainable approaches. In a globalised market the trade system should be used as a mechanism to internalise external costs by providing favourable treatment to products produced more sustainably. (Hardstaff 2002)

According to a study of the Royal Society of the Protection of Birds (RSPB) in the United Kingdom, the external costs of agricultural production, such as pesticide and nitrate pollution¹, amounted to nearly 90% of net farm income in 1996. According to the RSPB, it is only by passing external costs on to society that current production levels can be maintained (Hardstaff 2002).

Addressing such externalities involves making the polluter pay. However, where such measures have an impact on competitiveness with producers that are not subject to such 'costs', trade will be distorted in favour of less sustainable producers. According to Konrad von Moltke the very efficiency of commodity markets in

¹ Other externalised costs are emissions from international food transport, contamination of drinking water, loss of biodiversity, soil erosion, pesticide poisoning, urbanization and displacement of rural communities

eliminating rents has also eliminated the scope for addressing “externalities,” that is environmental factors that do not have prices determined by markets..²

According to Pete Hardstaff, mechanisms such as preferential tariffs are needed to address such distortions and re-balance trade in favour of more sustainable producers. This could be achieved through product differentiation as with current certification and labelling schemes, such as ‘organic’. According to the RSPB, recent developments in international standard setting and product certification (e.g. organic, fair trade and forest stewardship council certification) suggest that problems with implementing product-based discrimination are surmountable (Hardstaff 2002).

The suggestion that problems with implementing product-based discrimination seem surmountable, is the starting point of this feasibility study. The central question is: What are the possibilities and constraints for preferential import tariffs for sustainable produce?

The four main questions of this feasibility study are:

- What are the opportunities for preferential tariffs based on sustainable process and production methods in view of present WTO agreements?
- Do international standard setting organisations support the idea of preferential tariffs based on sustainable process and production methods?
- Are the present standards, certification and accreditation procedures sufficient to cope with pressure resulting from preferential tariffs?
- What can be done to surmount the identified problems with preferential tariffs for sustainable produce (e.g. research needs)?

1.2 Study methodology

The study involved the following steps:

- Establishing contact with international organisations developing sustainability standards, certification and accreditation systems. We asked them for an initial reaction or position on preferential tariffs linked to their sustainable process and production methods.
- Desk research about the possibilities for preferential tariffs for sustainable produce under present WTO agreements and jurisprudence.
- A phone conference with the contact persons from the international organisations that showed interest in the issue. The phone conference was structured on the basis of a concise discussion paper distributed to the participants before the conference.
- Reporting and additional research
- Final reporting

² This observation sounds paradoxical but in fact it is based on the efficient functioning of commodity markets that can not reflect all relevant costs. As long as markets were inefficient, resources might be found to address costs not reflected in market prices. Highly efficient markets eliminate such opportunities and consequently require some form of government action to rectify the inadequacies of markets in the face of the environmental impacts of agriculture (K. von Moltke 2002)

1.3 Structure of this report

Chapter 2 offers an attempt to answer to the question: What are the opportunities for selective reduction of import levies under present WTO agreements?

Chapter 3 presents the reactions of the international organisations involved in this study, answering two questions:

- Do these organisations on support the idea of preferential tariffs for sustainable produce?
- Are the present standards, certification and accreditation procedures sufficient to cope with pressure resulting from preferential tariffs?

Chapter 4 offers a quick scan of opportunities and constraints for the introduction of preferential tariffs.

Chapter 5 offers conclusions and recommendations.

2 WTO rules on process and production methods

This chapter tries to answer the question: What are the opportunities for preferential tariffs based on sustainable process and production methods under present WTO agreements?

2.1 GATT rules

According to present trade rules (GATT articles I and III) trade differentiation is only allowed based on the product characteristics itself (like product). Distinction between products based on a process or production method (PPM) is only allowed if the PPM affects the characteristics of a product so that the product itself may pollute or degrade the environment when it is consumed or used (product-related PPM). *Not* a fair ground for distinction between products is a process or production method itself that has a negative impact on the environment through, for example, the release of pollutants into the air or water during the production stage (non-product related PPM)³.

Article I of GATT contains the most favoured nation (MFN) obligation requiring that 'any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in any country shall be accorded immediately and unconditionally to the "like products" originating in all other countries. Any substantial differentiation in the regulation of trade between countries violates the MFN obligation.

Article III of GATT mandates national treatment of "like products". National treatment requires that imports "be accorded treatment no less favourable than that accorded to like product of national origin in respect to all laws, regulations and requirements affecting their internal sale". Article III precludes internal taxes or fees which are in excess of taxes or fees levied on domestic products. In essence, the national treatment provision requires imports to be treated in the same manner as all other like products.

³ There is no clear line between product-related and non product-related PPM. A 1970 Working Party on Border Tax Adjustments suggested 'some criteria' for determining whether products qualified as "like" products, which included the product's end-uses in a given market; consumers' tastes and habits, which change from country to country; and the product's properties, nature and quality. (Report of the Working Party on Border Tax Adjustment, BISD I8S/97, at 102).

Exceptions to these trade rules may be justified on the basis of Article XX of GATT. Moreover, two 'annexed agreements' to the GATT contain derogations to the rules on PPMs.

2.2 Exceptions based on Article XX of GATT

Article XX of GATT list limited and conditional grounds⁴ for exception to the Articles I and III of GATT. With regard to exceptions on social and environmental grounds, Article XX, includes two relevant exception grounds article XX (b) and article XX (g). In the near future possibly also sub-article XX(a) will become relevant in the debate about consumers concerns.

Article XX (a): Public Morals

Article XX (a) refers to measures 'necessary to protect public morals. With so-called "consumer concerns" relating to trade on the rise, the public morals exception may be discussed in the near future in relation to some of the most difficult aspects of the trade-environment nexus in the WTO, i.e. unilateral actions affecting trade based on production methods in other Members on which no international consensus can be found, precisely because the arguments condemning foreign production methods are based on moral arguments in the importing country. At this moment there is no jurisprudence about dispute settlement about this sub-article (Wiers, 2002).

Article XX (b): protect the life or health of humans, animals or plants.

Article XX (b) creates an exception for actions necessary to protect the life or health of humans, animals or plants:

- (1) *that the policy in respect of the measures for which the provision was invoked fell within the range of policies designed to protect human, animal or plant life or health;*
- (2) *that the inconsistent measures for which the exception was being invoked were necessary to fulfil the policy objective; [...]*

Whether the environmental policy falls within the 'range of policies designed to protect human, animal or plant life or health' (Article XX(b)) will usually not be very strictly scrutinised. Panels do not normally include environmental specialists. Panels and the Appellate Body have emphasised on various occasions that WTO Members are free to set the level of protection of their choice for their populations. Thus, although they will check the necessity of the measure taken to achieve that goal panels and the Appellate Body will not check the necessity of a measure's environmental policy goal as such (Wiers, 2002).

⁴ The chapeau of article XX is animated by the principle that while the exceptions of Article XX may be invoked as a matter of legal right, they should not be applied as to frustrate or defeat the legal obligations of the holder of the right under substantive rules of the General Agreement. If those exceptions are not to be abused or misused, in other words, the measures falling within the particular exceptions must be applied reasonably, with due regard both to the legal duties of the party claiming the exception and the legal rights of the other parties concerned.

Article XX(g): conservation of exhaustible natural resources

GATT Article XX (g) creates an exception for trade restrictions that relate to the conservation of exhaustible natural resources when implemented in conjunction with restriction of domestic production or consumption:

- (1) *that the policy in respect of the measures for which the provision was invoked fell within the range of policies related to the conservation of exhaustible natural resources;*
- (2) *that the measures for which the exception was being invoked – that is the particular trade measures inconsistent with the General Agreement – were related to the conservation of exhaustible natural resources;*
- (3) *that the measures for which the exception was being invoked were made effective in conjunction with restrictions on domestic production or consumption.*

In the preparatory meetings to prepare a draft trade charter, the natural resources were usually referred to as “raw material” or “mineral”. However the very first GATT panel report dealing with paragraph (g) already interpreted “exhaustible natural resources” to include fish. Subsequently, salmon and herring, dolphins, gasoline, turtles, and even clean air have been found to fall within the meaning of “exhaustible natural resources”.

The fact that the Appellate Body in US-Shrimp-Turtle found that turtles were “exhaustible natural resources” is hardly surprising. The turtle species in question were all listed as ‘threatened by extinction’ by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Moreover already under GATT dispute settlement practice, animals that were not in danger of extinction (like tuna, salmon and herring) were considered “exhaustible natural resources”. It can therefore be safely assumed that animals do not have to be threatened by extinction to qualify (Wiers, 2002).

In US-Gasoline, the panel observed that clean air ‘was a resource (it has value), and it was natural. It could be depleted. The fact that the depleted resource was defined with respect to its qualities was not decisive for the panel. Arguably, if air that is not “depleted” by pollutants emitted through the consumption of gasoline qualifies as “exhaustible natural resource”, then also qualify. That would imply that measures taken to reduce greenhouse gas emissions could be covered by the exception in paragraph (g). Another important resource that might be covered by paragraph (g) is potable water. Water shortages already exist in many regions of the world, and may be expected to become one of the greatest environmental problems of the 21st century (Wiers, 2002).

To summarise: trade discrimination between countries is to a certain extent possible based on public morals, protection of the life or health of humans, animals or plants, as well as based on the conservation of exhaustible natural resources. It can be argued that positive discrimination in the form of trade preferences is possible on the same grounds. The preliminary conclusion is that based on the articles XX (a), (b) and (g) preferential tariffs for countries that sell sustainable produce is possible.

But preferential tariffs for sustainable produce do not have the intention to favour countries but to favour producers regardless of the country. We need to go deeper in the trade rules and jurisprudence to answer the question of this chapter: *What are the opportunities for preferential tariffs based on sustainable process and production methods under present WTO agreements?*

2.3 Conditions for exceptions based on article XX b & g

In this paragraph we will summarise the jurisprudence on Article XX (b) and XX (g). There is no consensus about the interpretation of it and should therefore be taken as indicative. We first present the overview of relevant issues and then briefly present each issue:

- In a dispute settlement procedure in the WTO, judgement will be made on a case-to-case basis.
- The focus of the requirements is on individual producers instead of the general legislation of an exporting country. With certification programmes of individual producers requirements should be guaranteed.
- Requirements can be applied with sufficient flexibility, taking into account the conditions prevailing in the exporting country.
- Requirements are based on an international agreement with the exporting countries or the importing country have at least made "serious efforts" to negotiate a multilateral agreement with the exporting countries.
- The objective are topics of which production in exporting countries have negative cross-border effects with preference for topics with consequences in the jurisdiction of importing country as well.
- Requirements on domestic production are at the same level as requirements on imports.
- Procedural aspects of regulation will be transparent and predictable. (Wiers, 2002).

Case-to-case basis

The "affirmative commitments" set out in Article I, II and XI GATT, and the policies and interests embodied in the "general exemptions" listed in Article XX GATT can only be given meaning within the framework of the GATT and its object and purpose by a treaty interpreter on a case-to-case basis.

The argument usually invoked for a presumption that Article XX simply prohibits PPM-based measures is that of the "slippery slope" of "green protectionism", which may moreover be extended to PPMs relating to labour and human rights standards. However Wiers (2002) does not regard this policy argument as a convincing basis for a legal presumption against this kind of measure. A case-by-case and rigorous application of the requirements in Article XX GATT will arguably suffice to avoid this "slippery slope". Even PPM-based measures targeting environmental problems in the exporting country could in theory meet the standards of the chapeau.

Requirements for individual producers

It is quite obvious that a producer or exporter must ensure that its products meet the importing country's requirements if it wishes to sell its product on the importing country's market. It can be argued that this is also true for the requirements set by the importing country regarding process and production methods. The importing country can not prescribe a producer in the exporting country how to produce; *only how to produce if it wishes to compete on its market*. It is quite another thing for the importing country to make access to its market dependent upon whether the authorities in the exporting country determine how their producers produce. Measures targeting foreign policies by making imports dependent on policies of the exporting country's government treat foods on the basis of their country of origin. Producers in the exporting country may see the market access of their products denied by the importing country because of their origin, even if they fully comply with the importing country's PPM requirements. Such measures will accordingly more easily lead to unjustifiable or arbitrary discrimination than measures that

target producers by making imports dependent on production methods, irrespective of products origin. PPM-based measures targeting producers are preferable in terms of the chapeau, as they endanger the trading system much less than measures targeting governments (Wiers, 2002).

One theory of how extra-territorial enforcement of environmental laws could be implanted through action without violating the Tuna-Dolphin panel report, focuses on an import certification requirement. To achieve the goal of the MMPA – the elimination of fishing techniques killing dolphins – the United States could require certification from tuna importers that the tuna was caught using ‘dolphin safe’ methods. This approach would be an action within national jurisdiction on foreign waters. While this approach may appear to violate the spirit of Tuna-Dolphin II, the panel’s precise choice of the term “extra-jurisdictional” suggest such an interpretation. The certification requirement would not place an affirmative requirement on a foreign nation to alter national policies, as did the MMPA. Perhaps of more importance, however, is that the certification requirement is more narrowly tailored to achieve its goal. No arbitrary distinctions would be made on the basis of national origin because the regulation would apply to all fishing vessel catching fish for sale in the United States. Arguably, this type of process could be used to enforce any production process method requirements, as long as a similar requirement is placed on like products whether imported or domestic (Fletcher, 2002).

Flexibility

In the US-Shrimp-Turtle case the Appellate Body pointed out that discrimination may also be the result of a lack of flexibility regarding the conditions prevailing in the exporting countries. The lack of flexibility of the original US implementing measures, the panel interpreted other Members to adopt ‘essentially the same’ regulatory programme would amount to unjustifiable discrimination, demanding them to adopt programmes that are ‘comparable in effectiveness’ would not. Such a requirements must in practice be applied with sufficient flexibility, taking into account the conditions prevailing in the exporting country.

In this case the panel added that import restrictions could have consequences on policy priorities of exporting countries. The panel, looking at the US law and implementing measures as actually applied by the US, concluded that there were no indications of protective application. By allowing exporting countries to apply programmes not based on the mandatory use of turtle excluder devices (TEDs), and by offering technical assistance to develop the use of TEDs in third countries, the United States had demonstrated that its measures were not being applied so as to constitute a disguised restriction on trade (Wiers, 2002).

International agreement versus unilateral approach

The OECD stipulated in 1997 that ‘present trading rules do not allow one country to use trade measures for the purpose of unilaterally enforcing its own environmental preferences or requirements on other countries’. Many policy makers, non-governmental organisation and academics still assume that the WTO simply prohibits its unilateral PPM-based measures.

But the text of Article XX (g) does not exclude the possibility of resource protection beyond the domestic border or the targeting of behaviour abroad through trade restriction. Moreover, there is no rule in public international law that prevents states from protecting the environment located outside their territorial jurisdiction. According to Principle 21 of the 1972 Stockholm Declaration, states have the sovereign right to exploit their own resources pursuant to their own environmental

policies, but at the same time have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. This formula was essentially repeated in Principle 2 of the 1992 Rio Declaration (Wiers, 2002).

Import requirements related to article XX (b) & (g) require that there is no GATT consistent or other less trade distorting measure available to use the policy objective. The Tuna-Dolphin II panel found that an action was only necessary when other alternatives which are otherwise consistent with GATT are exhausted. *All possible alternatives must be exhausted, including extensive multilateral negotiations, before trade restrictions are "necessary"*. The Appellate Body elaborated in EC-Asbestos/Korea-Beef that the effect that assessing "necessary" involves a process of weighing and balancing factors, such as the contribution of the measure to the goal, the importance of the interest protected, and trade impacts. This weighing and balancing process is 'comprehended in the determination of whether a WTO-consistent alternative measure is reasonably available'.

A related issue is the share of the export as part of the total production. Sometimes, the absence of such a link will indeed be reflected in the measure's lack of effectiveness in contributing to its desired objective. This will especially be the case when the Member taking the measure imports only a small share of the product involved (Wiers, 2002).

Topics with negative cross-border effects

According to Wiers, the idea is that by importing products produced with an environmentally harmful PPM, the importing country is contributing to the harm caused. The Tuna-Dolphin I panel report found that Article XX (g) could not be used to justify trade restrictions outside the jurisdiction of the member nation. One member nation is not allowed to force a change in the policies of another member nation. However, the Tuna-Dolphin II panel report found that the text of Article XX(g) did not place any limitation on the location of the natural resource to be protected. Consequently, the Tuna-Dolphin II panel found that the policies pursued by the United States, within its jurisdiction, were within the range of policies covered by Article XX (g) (Fletcher, 1996). In the US-Shrimp-Turtle case, the Appellate Body noted that sea turtles are highly migratory animals, passing in and out of various states. The sea turtle species covered by the US measure were all known to occur in waters over which the United States exercises jurisdiction. The Appellate Body noted there was a 'sufficient nexus between the migratory and endangered marine populations involved and the United States for purpose of Article XX (g) (Wiers, 2002).

The danger identified by the Appellate Body of eroding or rendering naught the market access rights negotiated in the WTO Agreement seems most apparent when an environmental problem is completely located within the jurisdiction of the exporting country, without any cross-border effects. Most thorny will be disputes involving local environmental problems upon which little or no consensus exists, such as animal welfare. A number of approaches have been proposed to argue that PPM-measures may even be acceptable in such cases, such as a 'new effect doctrine' (Wiers, 2002).

Requirements for domestic production

When a country puts restrictions on imported products identical treatment of domestic products is *not* required. On the other hand, if no restrictions at all are imposed on domestically-produced like products, then the clause is obviously not being complied with.

The panel in US-Auto Taxes, when it dealt with fleet averaging requirements for imported cars, observed that 'the application of fleet averaging in a similar manner to this application to domestic cars [...] served to render effective the conservation measure. In the US-Gasoline case restrictions on the consumption or depletion of clean air by regulating the domestic production of "dirty" gasoline are established jointly with corresponding restrictions with respect to imported gasoline. And also in the US-Shrimp-Turtle case the US had enacted legislation two years earlier regulating the fishing methods of US vessels (Wiers, 2002).

Transparency and predictability

To prevent from measurements that are open for discrimination that is unjustifiable or arbitrary the procedural aspects of regulation should be transparent and predictable.

To summarise: Preferential tariffs for sustainable produce are likely to be acceptable under the following conditions although judgement in the WTO will be taken of a case-to-case basis.

The preferential tariffs apply to all WTO Members and focus on producers that comply with the PPM requirements. PPM requirements concerning standards, certification and accreditation can be applied with sufficient flexibility, taking into account the conditions prevailing in the exporting country. The importing country has made serious efforts to enable exporting country producers to comply with the PPM requirements. Procedural aspects of PPM requirements concerning standards, certification and accreditation are transparent and predictable.

2.4 Annexed agreements

There are two 'annexed agreements' to the GATT derogating on the GATT ruling with regard to process and production methods. These annexed agreements are:

- the Agreement on Technical Barriers to Trade (TBT);
- the plurilateral Agreement on Government Procurement (GP).

The Agreement on Technical Barriers to Trade (TBT)

The TBT states that technical regulations apply to '...product characteristics or their related process or production methods'. This, it has been argued, means that the TBT does allow PPM-based discrimination.

Technical regulations include both voluntary and obligatory labelling schemes. Voluntary labelling schemes such as the schemes for organic farming are widely accepted. Obligatory labelling schemes receive strong international opposition. The implications of an obligatory labelling can be illustrated with the Tuna-Dolphin issue. If the United States demands 'dolphin safe' tuna, it could require certification from tuna importers that the tuna was caught using 'dolphin safe' methods. The certification requirement would not place an affirmative requirement on a foreign nation to change national policies, which was the point in the Tuna-Dolphin dispute. The certification requirement is more narrowly tailored to achieve its goal.

No arbitrary distinctions would be made on the basis of national origin because the regulation would apply to all fishing vessel catching fish for sale in the United States. But it is a technical barrier to trade because only certified 'dolphin safe' tuna can be exported to the United States. Fishers that do not adapt their fishing methods can not have access to that market. And a trustworthy certification system needs to be built for all fishing vessels seeking to be labelled as approved 'dolphin safe'.

The plurilateral Agreement on Government Procurement (GP)

The GP also seems to allow for distinctions to be made on the basis of PPMs. Article VI of the GP states that technical product specifications, laying down, inter alia, 'processes and methods of their production' shall not create 'unnecessary obstacles to international trade'. According to an UK Government report 'This suggests that PPM criteria are allowed in the GP but need to be applied in a non-discriminatory manner'.

The RSPB suggests that there is no reason why specific rules on PPM-based discrimination cannot be drawn up within the Agreement on Agriculture, which is also an annexed agreement (Eat this, 2001).

2.5 Opportunity for derogation in the Agreement on Agriculture

At present, the Agreement on Agriculture (AoA) does not allow discrimination based on sustainability of process and production methods. On market access the current AoA suggests that measures other than tariffs (e.g. quantitative restrictions, variable import levies etc) are not legitimate, except in extreme circumstances. Tariffs themselves are trade distorting and subject to reductions over time. According to Hardstaff (2002) the objective and content of the current AoA suggests that, ultimately, tariffs and more trade distorting subsidies should therefore be eliminated and only non or minimally trade-distorting subsidies should be permitted.

According to the RSPB, a number of problems exist with this approach (Hardstaff, 2002):

- In developing countries the day-to-day problems are extreme and require an ongoing policy response that does not fit in the current approach of the AoA that can only allow temporarily exemptions to the rules.
- Many countries cannot afford to use subsidies and need the flexibility to use 'trade distorting' policy mechanisms in the medium and long term.
- Trade distortions seem to be treated as an absolute concept (i.e. some policy tools such as variable levies are trade distorting and thus should not be used). Yet, in reality, trade distortion is likely to be relative, for example, to the economic development of the country concerned.

In the debate on AoA reform, the negotiations about non-trade concerns (NTCs) offer an opportunity to introduce discrimination based on process and production methods. NTCs can broadly be categorised as the aspects of agriculture that the market does not, or cannot, necessarily provide. Such concerns include secure supplies of food, rural development, biodiversity conservation, food safety and landscape values.

3 Comments of international organisations

In this chapter we present the positions and comments of a number of international organisation working on sustainable process and production methods, on the idea of preferential tariffs for sustainable produce. This chapter is structured around the following questions.

1. What exactly do we mean by preferential tariffs for sustainable produce?
2. Do international standard setting organisations support the idea of preferential tariffs based on sustainable process and production methods?
3. Are the present standards, certification and accreditation procedures sufficient to cope with pressure resulting from preferential tariffs?
4. What are negative side effects that could be expected with the introduction of preferential tariffs for sustainable produce?
 - a.-related to the standards, certification systems and accreditation programmes
 - b.-related to international trade in sustainable produce
 - c.-related to investments in sustainable process and production methods
5. Which countries and actors (should) benefit most from preferential tariffs?
6. Which countries, and actors in and outside the EU are expected to oppose to preferential tariffs for sustainable produce, and why?

3.1 International organisations involved in this study

One of the underlying assumptions of this study is that if preferential tariffs would be introduced they are linked to international standards for sustainable process and production methods. Crucial for the feasibility of this idea is the opinion of the international organisations presently working on international standards for sustainable process and production methods.

The criteria we applied for the selection of international organisations were that the organisations have an internationally applied system of product based standard setting, certification and accreditation. Moreover wanted a diversity of sectors and consumer concerns in the European Union.

Based on these criteria we consulted the following six international organisations:

- International Federation of Organic Agriculture Movements (IFOAM)
- Eurogroup for Animal Welfare
 - Forestry Stewardship Council (FSC)
 - Marine Stewardship Council (MSC)
 - Fairtrade Labelling Organizations International (FLO)
 - MPS Environmental Floriculture Programme.

The Eurogroup for animal welfare does not have an international system of certification and accreditation but favours strict EU legislation on animal welfare. Investigation into a seventh international organisation, the Global Reporting Initiative (GRI), led to the conclusion that this reporting standard is at present not relevant for this study, because it is not a product-based standard.⁵

3.2 Methodology

When we first contacted the above mentioned international organisations we asked the contact persons to answer the following two questions:

- Is your organisation interested in the idea of a selective reduction of import levies for certified sustainable products?
- What is your assessment of the certification system at present? Are the standards, certification and accreditation procedures sufficiently established to link trade preferences to it? If not, what would be required to strengthen the certification system towards this end?

Then we prepared a discussion paper (see annex1) for a phone conference held on the 12th of December. The discussion paper presented the following questions for the phone conference:

- What exactly do you mean by preferential tariffs? Do we all have the same understanding?
- Why does your organisation want it? Why should the European Union want it?
- What are negative side effects that could be expected with the introduction of preferential tariffs?
 - a.-related to the standards, certification systems and accreditation programmes
 - b.-related to international trade in sustainable produce
 - c.-related to investments in sustainable process and production methods
- Which countries and actors would you like to benefit most from preferential tariffs? Which countries and actors do you expect will benefit most from preferential tariffs?
- Which countries, and actors in and outside the EU are expected to oppose to preferential tariffs, and why?

Most of the organisations did not have a formal position. The contact persons were so kind to share the arguments and issues they considered important for their organisations.

Participants of the phone conference were:

- Theo de Groot, director of MPS Environmental Floriculture Programme (MPS);
- Chris Fisher, advisor for the Eurogroup for Animal Welfare;
- Matthew Wenban Smith, head of Policy & Standards Unit of the Forestry Stewardship Council (FSC);
- Luuk Laurens Zonneveld, director of Fairtrade Labelling Organizations International (FLO);

⁵ The Global Reporting Initiative has the mission to develop globally applicable guidelines for reporting on economic, environmental and social performance. The GRI has developed an international reporting standard: the Sustainability Reporting Guidelines.

- van Poppel (Ministry of Agriculture, Nature management and Fisheries);
- Gerwin Verschuur (CLM, chairman);
- Kees-Jaap Hin (CLM, minutes).

The comments of Gunnar Rundgren, president of the International Federation of Organic Agriculture Movements (IFOAM), taken during a phone conversation on the 20th of December are also included.

Alexia Cummins, International Conservation Manager of the Marine Stewardship Council (MSC) did not participate in the phone conference but responded to the initial two questions.

In the following paragraphs we present the arguments of the international organisation per question.

3.2.1 The meaning of preferential tariffs for sustainable produce

All participants of the phone conference agreed with the following description of preferential tariffs for sustainable produce:

- Preferential tariffs are tariff reductions specifically for sustainable products imported into the European Union.
- Sustainability refers to social (people), environmental (Planet) and economic (Profit) issues.
- The sustainability of products needs to be guaranteed, while the sustainability is not necessarily measurable in the product itself. In WTO terms we are talking about non-product related PPMs.
- The sustainability guarantee is based on sustainability standards, certification and accreditation programmes.
- Preferential tariffs should apply for primary products and for processed food products as well.
- Preferential tariffs for sustainable produce need to be substantially lower than the common tariffs to make a difference in the market.

3.2.2 Support for preferential tariffs for sustainable produce

FLO and its member National Fairtrade Labelling Organizations (Max Havelaar Netherlands etc.) do support the selective reduction of import levies for fair trade products. There is a position of the fair trade movement on the draft EU Green Paper on CSR covering this idea.

According to FLO, the introduction of preferential tariffs for sustainable produce would send a political signal in terms of in which way politics should be developing. It has to do with globalisation and adding social and other aspects to globalisation to ensure that not only economic factors count.

FLO hopes that the preferential tariffs would also reduce the end price to consumers. Because practically, fair trade is running into the situation that the price difference between fair trade products and non-fair trade products are getting so big that it is becoming a problem in marketing fair trade products. Fair trade producers receive a guaranteed minimum price while world market prices for commodities decline. FLO expects that preferential tariffs for sustainable produce decrease the price difference for any product including for products like rice, sugar and orange juice that are at present protected with extremely high import tariffs (the import tariff is higher than the free on board (f.o.b.) price when the products is being exported).

IFOAM has no formal position. Nevertheless, some reasons are given why IFOAM members could be interested in preferential tariffs for sustainable produce or not. A positive point is that it sends a strong signal to producers outside the EU to convert their production systems to the organic system or another sustainable production system. For IFOAM the idea is a second best solution that maybe good enough for the short term but not for the long term. In the long term, the first best solution would be to internalise external costs for conventional production. The formal position of IFOAM on preferential tariffs for certified organic products would depend on how potential negative side-effects are dealt with.

FSC does not currently have a formal position. According to FSC, preferential tariffs for sustainable produce stimulate certified sustainable timber production and also limit the import illegal cutted timber. Preferential tariffs for sustainable produce create an incentive for timber producers in developing countries implementing environmental and social standards to give them a comparative advantage over non-certified (and often illegal) timber producers.⁶ FSC welcomes study of mechanisms, which could create a fairer playing field for certified-sustainable and non-certified products in sectors which, are widely recognised to be non-sustainable and/or have significant negative externalities. At the broad level of principle it does not seem reasonable that consumers should have to pay extra for sustainable products - the extra cost of these products is because they internalise costs which non-sustainable products externalise. But FSC is not convinced that selective reduction of import levies for certified products is the most appropriate mechanism available. In general, the global application of export levies on non-sustainable production might be more equitable than preferential tariffs for imported sustainable products which do not create a positive incentive for home-produced sustainable products.

MPS Environmental Floriculture programme support the idea of preferential tariffs for sustainable produce. MPS is a global certification system for flowers and ornamental plants, actually used in 31 countries. Preferential tariffs linked to MPS stimulate environmentally friendly flower production in those 31 flower producing countries. Social standards for flower production are in development and supported by IOF. In developing countries you cannot neglect social issues. In the Netherlands MPS is suffering from decreasing interest for environment. Social issues are of increasing importance. Preferential tariffs for sustainable produce (including environmental and social issues) would offer a welcome new impulse to the development of MPS.

Eurogroup for animal welfare is very interested in the idea of a preferential tariffs for goods meeting high welfare standards. Animal welfare issues are process related and in an ideal world we would like to see imports regulated on the basis of processes. This position has been advocated briefly in the reports 'Food for Thought' and 'Hard Boiled Reality'. Eurogroup has proposed to the European Commission that it should consider developing preferential tariffs and quotas for certain high welfare products such as eggs. Eurogroup hopes that there may be some scope for taking this issue forward in the second phase of WTO negotiations on agriculture. Eurogroup would like to see changes in current WTO agreements regarding what constitutes a like product and would like to move forward the PPM discussion. Some ideas on this point are included in a discussion paper prepared by Chris Fisher, entitled 'Who is afraid of PPMs' and presented to the European Commission as part of its dialogue process with civil society. In parallel with the issue of

⁶ In the forest products trade much timber is illegally harvested and traded. FSC is involved in the development of schemes to verify legal compliance.

levies and PPMs, Eurogroup has also advocated the use of mandatory labelling on the basis of PPM welfare criteria.

Whilst the MSC is interested in this idea in principle, it is currently not something that it is actively pursuing. According to MSC, the most probable means by which trade preferences could be linked to the MSC is by procurement agreements. There are no current procurement agreements for MSC-labelled fish due to small number of fisheries that have been certified. Under EU procurement legislation, you may not specify a named certification scheme exclusively, but specific criteria to be met can be listed. This does not apply to the private sector, however, which can be as specific as they like.⁷

3.2.3 Strength of standards, certification and accreditation programmes

According to IFOAM the organic standards, certification systems and accreditation programme are good enough to cope with the pressure of preferential tariffs.

At present MPS is a label for the flower traders. According to MPS, preferential tariffs for sustainable flowers will only be successful if there is also a label for the consumer market. The MPS scheme is fraud proof. However, the pressure to fraud is a function of the level of the preferential tariff. A lower tariff will increase the pressure to fraud, which could require a response in terms of more inspections.

In the field of animal welfare there are mostly voluntary certification schemes. The International Office for Epizootics (OIE) is currently just beginning the process of looking at international welfare standards, but these will take time to develop and are likely to focus upon minimum rather than high level standards. Eurogroup favours the use of preferential tariffs on the basis of objective criteria set and monitored by accredited voluntary schemes managed independently, including schemes developed by NGOs; or on the basis of nationally (or EU) agreed standards or accreditation schemes that go significantly beyond the industry norm.

The FLO fair trade standard-setting and certification system is a solid base for preferential tariffs for sustainable produce.

The FSC scheme provides robust certification to publicly available standards in the forest. The chain of custody mechanism allows products to be traced from the forest to the consumer (or the point of import, if that is required for charging a levy). The information is potentially available to allow this to be the basis for establishing differential levies. Clearly this would require some formalisation in terms of declarations to customs officials if a system were to be introduced.

For the MSC scheme it is far too early to try and link the certification system to trade preferences. The MSC is at quite an early stage in its life, with only 6 certified fisheries.

⁷ FLO argues that public procurement policies (public procurement accounts for 14% of the EU economy!) do not favour sustainable PPMs at all.

3.2.4 Side effects related to standards, certification and accreditation

GO-NGO co-operation

FSC is concerned that preferential tariffs linked to sustainably produced timber would lead to discrimination against private schemes such as FSC that started the whole thing. There is the risk that government defined standards will discriminate against private label schemes. The history of environmental and social standards is that they have been led by private schemes and not by governments.

For FLO the worst thing that could happen is if countries start to develop their own standards. For example Belgium started to develop its own social standards. First of all the Belgium's is reinventing the wheel. Secondly the standards are lower than our social standards, and thirdly the Belgium standards are not well accepted by the market.

IFOAM fears that ownership of the standards will shift from private organisations to governments. IFOAM is experiencing this pressure already in the EU, where the European Commission does not formally recognise the IFOAM basic standards nor the organic accreditation programme. The position of IFOAM is that governments are "taking over" the standards a too much. IFOAM fears that governments will completely overtake the definition of organic standards, certification procedures and accreditation programmes. The only way to get the support from IFOAM for this idea would be the guarantee that the standards will not be completely overtaken. There is an opening. In the draft action plan on organic farming the European Commission acknowledged for the first time that co-operation with IFOAM on the organic agriculture regulation is a problem.

GO-NGO co-operation is also an issue in the WTO. IFOAM asked for an observer status in the WTO TBT agreement. This status was refused, as a matter of principle, because the agreement is considered to be a matter of nations only. Therefore IFOAM does not feel itself as being part of the discussion while that would be very important for accreditation programme of IFOAM.

Weak or exclusive standards

There is currently a range of schemes in the forest sector, with different requirements and levels of credibility in terms of claims to sustainability. What standards are considered acceptable to qualify for any reduced levy?

According to FSC an acceptable accreditation scheme would need to be developed to determine which standards and systems for certifying sustainability are acceptable. If reduced levies are introduced for schemes, which are not widely considered to be fair measures of sustainability, the objective of the policy would be undermined. FSC is concerned that involving governments in this stage would lead to a weakening of the production standards. The weakening of standards could come from international discussions on an international benchmark at a reasonable level for all the countries.

Eurogroup is concerned about the potential to improve the standards in the future. If you would give a zero tariff to a good but not perfect standard, you have no way left to encourage a higher standard in the future. In the case of animal welfare for which there is no international standard the alternative would be for each WTO member state to set its own criteria and that may give encouragement to adopt an international standard sooner rather than later. It may go both ways.

According to IFOAM the problem is in the certification and accreditation standards rather than in the production standards. What is likely to happen is not weakening of these standards but putting the standards so high that they become exclusive. The European Commission has accredited only one developing country (Argentina) with the third country status which eases imports of organic products. In ten years time only 7 countries have got that status. Linking preferential tariffs to organic

certification could make the European Commission even more demanding on third countries.

Mutual recognition of certification programmes

There is no international system to recognise standard setting and accreditation bodies. The lack of mutual recognition of certification programmes is negatively affecting international trade. According to IFOAM, the EU has a very unpredictable and non-transparent way of accreditation of organic certification programmes of third countries or imports from third countries to the EU, two preconditions for any sensible international trade. The European Commission can not handle the concept of an independent international accreditation body. Because the European Commission and other governments do not recognise the organic accreditation programme there are only 21 out of 250 organic certification programmes accredited (although with an estimated market share of about 33%) with 9 more certification programmes in the process of accreditation.

3.2.5 Side effects related to international trade

Preferential tariffs for sustainable produce are likely to lead to an increase in international trade.

Who reaps the benefits?

According to Eurogroup promoting international trade is not an end in itself. It has to produce benefits although it does not necessarily produce a completely win-win situation. The objective is expansion of total demand. The result should not be that sustainable production moves out of the EU replaced by imports from third countries. But some substitution of local produce by imports should be expected. There is a potential (not sure!!) that the prices for sustainable produce decrease.

Part of the IFOAM member organisations has a negative attitude towards globalisation and favour regionally based production and consumption. According to IFOAM the result of preferential tariffs will be that organic trade will be more globalised than conventional trade. The effect will be that competition pressures on organic production will be higher than on conventional production.

FSC is concerned that removing the differential between certified-sustainable and non-sustainable products, only for imported products would have the effect of making imported certified products more competitive compared to home produced certified products, whilst protecting non-sustainable home production from competition. This would be expected to put home producers of certified sustainable products at a further disadvantage compared to non-sustainable home producers. In the organic sector the likely impact would be to put home-based organic producers out of business, whilst continuing to protect home-based non-organic producers. Hardly an equitable outcome domestically.

Level of support for sustainable producers inside the EU

FSC argues that parallel to incentives for producers outside the EU, incentives such as taxes and tariffs should be applied to support sustainable production methods inside the EU as well. Equivalent differentials should be created for exports from home markets. Preferential tariffs on imports into the EU would likely lead to complaints from producers and exporters in the EU if they do not get preferential treatment in export markets. If there are no levies for exporting non-sustainable products, then these should be introduced. Exporters of sustainable products should then pay reduced export levies.

According to IFOAM, starting with the assumption that the tariffs have a justification, a reduction of tariffs is some kind of subsidy for producers exporting to the EU. IFOAM argues that trade preferences for producers exporting to the EU would imply the need for financial incentives for conversion to organic farming for producers inside the EU as well.

FSC argues that if it is equitable and economically sensible to create preferences for certified sustainable products from producers exporting to the EU, then surely it must be equitable and economically sensible to do the same for home-based producers. Preferential tariffs for sustainable produce begs the question of why there are differences applied to imported products, which are not applied in a like manner to home produced products. So, the FSC position would be that there should be differential levies applied between certified-sustainable versus non-sustainable products, but that the same differential should be applied whether the products are imported or home-produced.

Pig cycles?

The impact of imports in a relatively small market for sustainable products on the market equilibrium might be big. Therefore it is needed to predict the potential effects for a number of products. The time needed to change the farming system to a sustainable production system is quite long, especially for some perennial crops (like coffee, cocoa etc). In case the estimated effects are big it might be needed to design accompanying measures, to avoid pig cycles in the markets for sustainable produce.

3.2.6 Side effects related to investments in sustainable PPMs

All participants of the phone conference expect more investments in sustainable process and production methods in countries outside the EU.

FLO experience with coffee and bananas have taught that producers will invest if it is economically and financially beneficial. FLO is not concerned with the change in location (as mentioned in the discussion paper) since many tropical products are produced in areas with specific climatic and soil conditions.

MPS also has positive experience with flower producers investing in more sustainable production methods (in MPS the use of methyl bromide is forbidden) if the financial margins allow it.

IFOAM is certain that more producers would convert to organic farming. Preferential tariffs applied to organic cotton would be beneficial for the production of sustainable textiles. Textiles based on sustainably produced agricultural products would be favoured over synthetic textiles based on fossil fuel and other non-renewable resources.

The increase in international trade could possibly be significant for developing countries. The EBA initiative points into the same direction.

A problem for producers in developing countries could be the complicated certification procedure. Certification procedures should be as simple as possible, to ensure that farmers with little education can also benefit from preferential tariffs.

3.2.7 Who (should) benefit from preferential tariffs?

Potential beneficiaries

South and Central America and the Far East have the biggest potential to benefit from preferential tariffs for sustainable flowers.

According to Eurogroup, preferential tariffs for sustainable produce give developing countries the option to compete at the world market with products that are produced in a non-industrial way. There is obviously a great emphasis on market access to the EU. Eurogroup fears that countries like Brazil and Thailand will actually take up most of the market openings along with the USA and the Cairns group using increasingly industrialised methods. Preferential tariffs for sustainable produce and quotas are ways to offer developing countries an alternative way of entering the EU market.

Desired beneficiaries

FLO argues that the issue of preferential tariffs for sustainable produce should not be linked to other issues, because it weakens the political support for it. In principle all sustainable producers in all countries should be able to benefit from preferential tariffs for sustainable produce. FSC, Eurogroup and MPS all agree that preferential tariffs for sustainable produce should create a level playing field for producers anywhere in the world.

IFOAM comments that independent from political tactics, preferential tariffs specifically for the least developing countries would be easier to sell to organic producers inside the EU.

3.2.8 Who will oppose and who will support preferential tariffs?

Opposition and support within the EU

The market for flowers is already open. MPS expect only some opposition in regions like Italy and the South of Spain.

According to FLO opposition or support depends on the product. For example on orange juice there will be opposition from Spain.

FLO expects that Germany and Nordic countries are likely to be positive about the idea. The Netherlands alone is too small to make this point in the EU. The Netherlands should make a coalition with at least Germany and some other member states. IFOAM agrees with this analysis and refers to a recommendation by Sida (the Swedish development assistance organisation) making a plea for preferential tariffs, some years ago.

Opposition and support outside the EU

FSC is concerned about the political context in which the idea is presented. If it is presented as "we do it anyway", the chances for success are bigger than if it is presented as a negotiation tactic. If developing countries believe that the introduction of preferential tariffs for sustainable produce is a tactic for the EU to keep high tariffs on other products there will be a lot of opposition. Developing countries are likely to denounce preferential tariffs for sustainable produce as a new non-tariff barrier. The certification systems should be voluntary because developing countries interpret mandatory systems as a new trade barrier.

Eurogroup foresees opposition from the more developed developing countries (having industrial agriculture) and from the United States (US) although sustainable producers in the US could benefit from it. The US government is likely to protect mainstream agriculture (and link with the GMO issue). Support can be expected from small developing countries which benefit relatively little because they already benefit from the Everything But Arms initiative (zero tariff on most products).

3.2.9 Concerns with regard to developments in the WTO

According to the MSC, the stance of WTO member nations to the issue of PPM based eco-labelling has not yet been clarified, and it is one of considerable controversy. At the last ministerial meeting in Doha, the WTO Committee on Trade and the Environment was tasked with looking into this issue, and reporting back to the next ministerial, which is due to take place in Cancun, Mexico in September 2003.

According to Eurogroup there are no systemic problems to introduce preferential tariffs for sustainable produce. It is a political problem, because there are already huge differences in tariffs in agricultural products many of which are based on the degree of processing (tariff escalation). It is not a huge intellectual leap to introduce preferential tariffs on agricultural products based on processes.

Preferential tariffs already exists to some degree in the GSP schemes (General Systems of Preferences) that the EU has developed for sustainably produced timber. The door has already been opened for preferential tariffs for sustainable produce in a limited way. It just needs to go further now.

According to Eurogroup the topic is already on the table in WTO goods and services negotiations. Or be it from one specific angle which would be not the kind of discretionary tariff reduction from the EU, but something that would be agreed multilaterally between all the WTO parties.

Eurogroup warns for a process towards internationally agreed standards, and advocates an unilateral approach instead. For animal welfare there are no international standards at this moment. Chris argues for maximum flexibility and mutual benefit. If the standards are not flexible enough the discussion would only shift to negotiations about standards. The standards developed by a group of countries should be objective (compared to European Eco Label). Obviously standard organisations provide a neutral benchmark. Eurogroup feels that as long as it is done objectively, then there is no reason why that cannot be the basis for an unilateral approach. FSC suggests that transparent mechanisms for decision making are needed to be able to hold an unilateral approach.

A recommendation could be to present the idea of preferential tariffs for sustainable produce in the second round of proposals after Cancun and present it as unilateral proposals (as a bonus). For a successful introduction some member states in the EU should take the lead and start with one product. Trying to realise it at a multilateral basis would lead to endless discussions in international platforms without results. If a group of countries starts doing it, the debate will start.

4 Opening the debate

At the start of the debate it is important to realise that preferential tariffs for sustainable produce is just one of the options to deal with consumer concerns in the WTO. In the last paragraph some other options are presented briefly.

4.1 Topics for debate in the European Union

In this paragraph we introduce some of the topics that need to be discussed within the European Union, before preferential tariffs for sustainably produced products can be brought to multilateral forums such as the WTO.

4.1.1 Goals

Preferential tariffs for sustainable produce serve consumers within the EU interested in sustainable products with lower prices and a more diverse package of sustainable products throughout the year⁸. A third goal could be to increase the coherence between policies. Introducing preferential tariffs for sustainable produce is coherent with reforms of the Common Agricultural Policy in the direction of more sustainability.

4.1.2 Level of sustainability

This study started with the assumption that verifiable standards, certification schemes and accreditation programmes should lie at the basis of preferential tariffs. Contact was established with international standard setting organisations that offer standards that go further than environmental legislation. This approach neutralises a possible argument from third countries that the EU use preferential tariffs to export its environmental policies. A voluntary certification schemes based on

⁸ It could even be an explicit goal to reduce prices for sustainable produce compared to the prices for conventional produce. For example with the aim to stimulate market growth for sustainable produce. For fair trade products this goal would be very much welcomed, because the price difference between fair trade products and non-fair trade products are getting so big that it is becoming a problem in marketing fair trade products. However, price reduction is a questionable goal as long as the playing field with conventional production is only changed for third countries and not for sustainable production inside the EU. If price reduction for sustainable produce would be the main goal, sustainable production inside the EU would need some kind of preferential treatment as well. It is also important to recognise that, as long as external environmental and social costs are not fully reflected in the prices, sustainable produce is more expensive. Too heavy competition pressure on sustainable production will negatively effect on the environmental or social standards or on the economic viability and in both cases reduce its sustainability.

standards that go beyond environmental legislation is much more likely to be accepted in the WTO than an obligatory scheme based on environmental legislation.

4.1.3 GO-NGO co-operation

The present sustainability standards and certification schemes originated in the private sector, and have been subject to increasing government involvement. The representatives of the private sector that co-operated in this study made clear that the international standard setting organisations desire better co-operation with governments, to make preferential tariffs linked to their standards work. The organic sector has the experience that governments have taken over too much of the development of technical standards, certification schemes and accreditation programmes. The result of too much government involvement has been more technical barriers to trade than necessary. Other standard setting organisations are having similar experiences, and there is a common fear that preferential tariffs will increase government involvement rather than reducing it.

4.1.4 Legal barrier

Preferential tariffs are usually given to specific countries while they need to be given to specific producers within countries to be effective. For example sustainable timber producers should get a comparative advantage over non-certified (and often illegal) timber producers. This topic requires further study by legal experts.

4.1.5 Inequalities between sustainable and conventional production

Preferential tariffs for sustainable produce increase global competition in sustainable production while market protection to conventional production remains. This raises questions about the playing field for sustainable production within the EU. Further study is required (e.g. for specific products or product groups) on the effects of preferential tariffs on the growth of consumer markets for sustainable produce within the EU and on the market shares for EU producers. The best case scenario could be that the global market for sustainable produce grows quickly at the benefit of consumers (lower prices and bigger diversity of products throughout the year), producers in the EU and producers in third countries. However, it is important to recognise that the results of preferential tariffs are not necessarily a win-win situation. The worst case scenario would be that the EU market for sustainable produce shrinks, while EU production is replaced by imports.⁹ Of course, this worst case scenario can not occur with tropical products such as tropical timber, coffee, tea, bananas and cocoa.

Related to the former topic is the *level* of tariff reduction. There is a huge diversity of import tariffs among primary products and between primary and processed products.¹⁰ Depending on the level at which the tariff reduction is set in relation to the actual tariff rate, a preferential tariff can have a very big or very small effect.

⁹ Here the discussion about the sustainability of a global market based on long-distance travel and fossil fuels versus a regional market comes in.

¹⁰ The mechanism that tariffs increase when value is added through processing is called tariff escalation.

4.1.6 Costs and benefits

Preferential tariffs will reduce the revenues of the EU from these tariffs. We did not even try to estimate the loss of income. We do not consider this a major problem because the primary goal of tariffs is not to collect money, but to protect producers inside the EU against strong competitors outside the EU.

Preferential tariffs for sustainable produce is one of the options for the European Union to make a positive step on the issue of consumer concerns and the introduction of non-product related PPMs in the trade mechanisms of the WTO.

4.1.7 Multilateral or unilateral?

Preferential tariffs based on a multilateral agreement have a bigger chance to stand in WTO dispute settlement. But it takes a long time to work out a multilateral agreement with the risk that the idea will die halfway in the process.

There are so many different tariffs and preferential tariffs with different justifications that it would be worth studying the option of an unilateral approach. The advantage of an unilateral approach is that the message is clear: a group of countries, or the EU as a whole wish to pursue preferential tariffs for sustainable produce independent from the negotiations in the WTO. It would spark off discussion in the WTO, but depending on the way it is introduced, it does not necessarily lead to a trade dispute.

4.2 Important topics for countries exporting to the EU

The main arguments for exporting countries to accept preferential tariffs for sustainable produce are (hopes for):

- more sales of sustainable produce imply less environmental damage or social trouble in the production areas;
- higher economic returns (including export earnings) because of the higher margins (added value) on sustainable produce.

Some arguments why exporting countries may oppose to preferential tariffs for sustainable produce are:

- the investments needed in the development a certification programme for sustainable production. For developing countries this is an important argument. Technical assistance is needed to enable producers in developing countries to have access to the EU market for sustainable produce;
- the procedure needed to get the certification programme accepted by the European Union. At present, there is no international system to recognise standard setting and accreditation bodies. An exporting country should therefore accept the accreditation rules of the European Union. There is a risk that the certification programme is not accepted.¹¹ The lack of recognition of certification programmes is a very serious trade barrier;
- the least developing countries benefit little from this idea because they already have free access to the EU market for most products in the framework of the Everything But Arms initiative. However, preferential tariffs for sustainable

¹¹ It took the European Union ten years to accept the organic certification programmes of seven exporting countries

- produce can still be interesting for those products for which the EBA initiative did not provide free market access (in the short term) such as sugar and rice;
- the lack of trust in EU policies related to agriculture and food, fishery and forestry. Trust in exporting countries depends on the whole package of EU policies and reform proposals including domestic support, export subsidies and market access, and not just on preferential tariffs for sustainable produce.

4.3 Alternative approaches found during the study

During the study period we came across some alternative approaches that we will briefly present here.

4.3.1 National funds for the rural environment

In the context of international commodity trade, Konrad von Moltke (2002) proposed the creation of development funds for the rural environment of producing countries, deriving resources from direct payments from importing jurisdictions and subject to a governance structure that permits accountability and transparency at the appropriate level.

This proposal is based on experiences with the debt-for-nature swaps. In this instance, the resources for conservation involved the participation of stakeholders in both developed and developing countries, in particular creditor banks, northern conservation organisations, international organisations, developed country governments, recipient country government agencies, recipient country central banks, and recipient country environmental organisations. The solution developed was the creation of national environment funds. These stakeholders were organised in accordance with the laws of the recipient country with a precisely defined mandate. They were staffed by persons from the recipient country but their governance reflected the range of both domestic and foreign interests that were involved, giving due attention to the need to avoid a situation where foreign interests could exercise effective control over domestic environmental resources.

Key issues of this proposal are:

-Where are the necessary resources generated to pay farmers for internalising external costs? The fundamental principle must be that the consumer jurisdiction is responsible for generating the necessary resources. This implies a system of payments linked to volumes and sources of commodities. These payments must not function as taxes or duties on the imported commodities since the result would be the creation of additional obstacles to market access and the disadvantaging of precisely those producers who are prepared to act in a responsible manner. The payments need to occur automatically.

-How are the resources disbursed? A disbursement structure must be created that is characterised by low transaction costs and that properly reflects the interests of all the constituencies involved. Disbursement needs to be ensured in a manner that is fully accountable to all relevant constituencies.

4.3.2 Preferential quota for sustainable produce

Eurogroup suggest that the concept of preferential quota for sustainable produce may give importing countries some control on trade volumes. It is a smaller and therefore easier step than preferential tariffs for sustainable produce.

4.3.3 Border tax adjustment

Through "border tax adjustment", countries may impose domestic taxes and charges on imports and exempt or reimburse them on exports, in order to ensure the trade neutrality of domestic taxation. Only "indirect" domestic taxes" (levied on products) may be compensated upon import and export, while "direct taxes" (levied on persons) may not. That does not mean that taxes based on production methods can never be applied to imported products. The major focus of the term "indirectly" seems to lie in enabling the adjustment of taxation of inputs in products. In discussions in the Preparatory Committee, it was stated that the word "indirectly" would even cover a tax as such but on the processing of the product. It is unclear, however, whether this means that taxes on inputs that are consumed domestically in producing a final product may adjusted upon the import or export of the final product (Wiers, 2002).

5 Conclusions and recommendations

This chapter present the conclusions of this study as well as some recommendations on how to proceed with preferential tariffs for sustainable produce (in italics).

5.1 Study objectives and methodology

The Centre for Agriculture and Environment has carried out a feasibility study on the opportunities and constraints for preferential import tariffs for sustainable produce. The study was financed by the Dutch Ministry of Agriculture, Nature Management and Fisheries.

The four main questions of this feasibility study were:

- What are the opportunities and constraints for preferential tariffs based on sustainable process and production methods in view of present WTO agreements?
- Do international standard setting organisations support the idea of preferential tariffs based on sustainable process and production methods?
- Are the present standards, certification and accreditation procedures adequate to cope with pressure resulting from preferential tariffs?
- What can be done to solve the identified problems with preferential tariffs for sustainable produce?

The study involved the following steps:

1. Consulting/interviewing international organisations involved in the development of sustainability standards, certification and accreditation programmes. We asked the organisation for an initial reaction or position on the option of preferential tariffs linked to their standards, certification and accreditation programmes.
2. Desk research about the opportunities for preferential tariffs according to present WTO agreements and recent jurisprudence.
3. A phone conference with the contact persons of those international organisations that had shown interest in the subject, based on a discussion paper.
4. Reporting

5.2 Overall conclusion

The main conclusion of this feasibility study is that the idea of preferential tariffs for sustainable produce is promising, but needs further study before being launched into international fora.

Proceed with the idea of preferential tariffs for sustainable produce by exploring the opportunities for an unilateral approach based on a few products that create win-win situations inside and outside the EU.

5.3 Opportunities in view of present WTO agreements

There seems to be sufficient opportunity for preferential tariffs for sustainable produce in present WTO agreements. Although a multilateral approach is more in the spirit of the WTO, even a unilateral approach to the introduction of preferential tariffs for sustainable produce could be considered. A multilateral approach would take many more years. An unilateral approach could be more feasible if it is tested on some products which allow win-win situations between the EU and one or more trading partners.

5.4 Support from international organisations

International organisations involved in the development of sustainability standards, certification and accreditation programmes are generally positive about the idea of preferential tariffs for sustainable produce. However, most of the organisations do not yet have a formal position on this idea. Their ultimate position will depend on the ways in which elaborated proposals deal with the following issues.

A first step could be to use this report to inventorise the support for the idea of preferential tariffs in The Netherlands and in other European countries among governmental and non-governmental organisations.

5.4.1 Accreditation of certification programmes

Preferential tariffs for sustainable production should be based on certification programmes linked to sustainability standards. The present lack of mutual recognition of certification programmes is negatively affecting international trade. So far, each country or union of countries is doing that in its own (unpredictable and non-transparent) way. What would be needed is an international system to recognise standard setting, certification and accreditation bodies.

A first step could be to compare accreditation programmes of the international organisations with the accreditation programme of the European Commission on e.g. organic certification schemes of third countries.

5.4.2 Government and non-government co-operation

Since most sustainability standards have been developed by the private sector, the involvement of governments is a delicate issue. All organisations involved in this study fear that their systems may become unworkable if governments get too much involved. What is needed is genuine co-operation between government and non-government organisations on an equal basis.

A first step could be to identify ways to improve public-private cooperation around sustainability standards.

5.4.3 Favour sustainable production and consumption inside the EU

The goal of preferential tariffs is market growth for sustainable products. To get a better idea of the ways to realise that goal, a more in-depth study for some product groups would be needed. In such a study, attention is needed for effects on sustainable production *within* the European Union.

Implement an in-depth study for some products that create win-win situations inside and outside the EU.

5.5 Robustness of standards, certification and accreditation

5.5.1 Assessment of the programmes

The MSC scheme is not yet ready for the challenge. The IFOAM standards, MPS standards, FSC standards and FLO fair trade standards are claimed to be robust enough to cope with the pressures resulting from preferential tariffs. On animal welfare EU legislation on welfare friendly egg production could be a basis for preferential tariffs.

5.5.2 Diversity versus harmonisation

To stimulate environmental and socio-economic sustainability sustainability standards need to be adapted to regional conditions. The diversity in circumstances and cultural backgrounds needs standards and control procedures that take that diversity into account. This may easily conflict with international trade in which the key word is harmonised rules. The challenge is to combine these two demands. A guiding principle may be: "as harmonized as possible, as diverse as necessary".

A first step could be to develop a study around a case in which the tension between the two demands is very clear. The study would provide an analysis of the two demands and recommendations how to combine the two demands.

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Annex 1 Conference paper

This conference paper is meant as a preparation document for the phone conference to be held on 12 December 2002 from 15.30 to 16.30.

1 Contents

The first chapter presents the idea of green tariffs, the steps in the feasibility study and the organisations involved in it.

Chapter two presents the present WTO rules on non-product related process and production methods and the opportunities to introduce green tariffs for sustainable produce.

Chapter three presents the initial comments of the standard setting organisations on two questions.

Chapter four presents a proposal for the questions to be discussed further at the phone conference

2 Introduction

The Centre for Agriculture and Environment (CLM) is currently carrying out a feasibility study on selective reduction of import levies (green tariffs) for sustainable produce.

The following table illustrates actual tariff levels in the European Union.

Import tariffs in the EU per 100 kg in Euro or in percentage

	Tariff	Internal price
Crop products		
Sugar	51,18	
Wheat (flour)	17,20	11
Rice (white)	41,60	
Wood (Mirantie) ¹	2,5%	
Flowers (roses) ¹	8,5 %	
Dairy ²		
Milk (3% fat)	17,90	25
Milk powder (11-27 fat)	130,40	
Butter	189,60	
Cheese (Gouda)	151,00	
Meat		
Beef (back part of the animal) ³	221,10	300
Pork (hams) ⁴	77,80	200
Chicken (breast) ⁴	60,20	
Eggs ⁴	30,40	90

¹ by december 1th 2002

² by january 1th 2002

³ by october 29th 2002

⁴ by november 22th 2002

The study should be understood in the context of international trade negotiations in de the WTO on agriculture. There is a tension between the demands of WTO member countries for increased market access to the EU market, and the demands of society in the EU for sustainable production and processing methods and so-called non-trade concerns.

The study involves the following steps:

- Contact with international organisations developing standards and certification systems for sustainably produced products asking for an initial reaction or position on the organisations interest for green tariffs linked to their standards and certification systems.
- Desk research about the possibilities for green tariffs according to present WTO agreements and jurisprudence.
- A phone conference with the contact persons from the international organisations that showed interest in the subject. The phone conference will be structured on the basis of a concise discussion paper that will be distributed to the participants before the conference.
- Reporting and additional research
- Final reporting

The study is paid by the Dutch Ministry of Agriculture, Nature Management and Fisheries. Depending on the results of this study, the Dutch government may proceed with more in-depth study or with the elaboration of a proposal for green tariffs to be discussed within the European Union and eventually the WTO.

The following international organisations have been contacted:

- International Federation of Organic Agriculture Movements (IFOAM) working standards for organic farming
- Eurogroup for animal welfare (Eurogroup) working on animal welfare standards
- Forestry Stewardship Council (FSC) working on forestry standards
- Marine Stewardship Council (MSC) working on fishery standards
- MPS Environmental Floriculture Programme (MPS) working on standards for ornamental plant production
- Fairtrade Labelling Organizations International (FLO) working on fairtrade standards

3 WTO rules on trade differentiation based on sustainable production methods

According to present trade rules (GATT articles I and III) trade differentiation is only allowed based on the product characteristics itself (like product). Distinction between products based on process or production methods (PPMs) is only allowed if the PPM affects the characteristics of a product so that the product itself may pollute or degrade the environment when it is consumed or used (product-related PPMs). Not a fair ground for distinction between products is a process or production method itself that has a negative impact on the environment through, for example, the release of pollutants into the air or water pollution during the production stage (non-product related PPMs).

Exceptions to these trade rules may be justified based on Article XX of GATT, and in two 'annexed agreements' to the GATT derogations to the rules on PPMs have been found. Concerning the exceptions based on Article XX of GATT, the most commonly cited cases interpreting this article in relation to non-product related PPMs are the Tuna-Dolphin case and the Shrimp-Turtle case.

Both cases clarified the interpretation of Article XXb and XXg of GATT. In these articles is stated that:

- Article XX (b) creates an exception for actions necessary to protect the life or health of humans, animals or plants.
- GATT Article XX(g) creates an exception for trade restrictions that relate to the conservation of exhaustible natural resources when implemented in conjunction with restriction of domestic production or consumption

Concerning non-product related PPMs there are no general rules. In case of a dispute, the WTO-Appellate Body panels are judging on a case-by-case basis. However, through jurisprudence in the above mentioned cases some trade rules on non-product related PPMs have been developed. We will outline those rules here:

- The focus of requirements should be is on individual producers and not on the general legislation of an exporting country. The fulfilment of the requirements on individual producers should be guaranteed with certification programmes;;
- Requirements on PPMs should be applied with sufficient flexibility, taking into account the conditions prevailing in the exporting country;
- Requirements on PPMs should be based on a international agreement with the exporting countries or the importing country have at least made "serious efforts" to negotiate a multilateral agreement with the exporting countries;
- The PPM should have negative effects outside the borders of the exporting country and preferably has (negative) consequences for the jurisdiction of the importing country as well;
- Requirements put on PPMs domestically should be at the same level of the requirements put on PPMs of exporting countries;
- Procedural aspects of trade regulation should be transparent and predictable.

Concerning the derogations in the 'annexed agreements' to the GATT, we would like to present the derogation on PPMs in the Agreement on Technical Barriers to Trade (TBT). The TBT states that technical regulations apply to '...product characteristics or their related process or production methods' which, it has been argued, means that the TBT does allow PPM-based discrimination. Technical regulations include both voluntary and obligatory labelling schemes. Voluntary labelling schemes such as the schemes for organic farming are widely accepted. Obligatory labelling schemes receive strong international opposition.

If the WTO members want to enable green tariffs in the agriculture, forestry and fishery sectors, the Agreement on Agriculture (AoA) and the Agreement on Technical Barriers to Trade (TBT) offer opportunities to do so.

In the AoA (1994) members agreed liberalisation of agricultural trade focusing on export subsidies, domestic support and market access. It was also agreed to address non trade concerns (NTCs) in the next round, which is the Doha development round launched in Qatar in November 2001. For a discussion on green tariffs two issues are important: market access and NTCs.

In the TBT (1994) members agreed technical barriers to trade. The issue of non-trade related PPMs is not addressed in the present agreement. For the implementation of green tariffs and other ways of trade differentiation based on non-trade related PPMs in a non-discriminatory manner, clarification is required on issues such as standards development, certification schemes and accreditation programmes.

4 Reaction of NGOs

The idea of green tariffs was presented to six international organisation working on sustainable process and production methods (see the introduction):

We have asked the six standard setting organisations for comments on two questions:

- Does your organisations support the idea of selective reduction of import levies, based on sustainable process and production methods?
- Are the present standards, certification and accreditation procedures sufficient to cope with selective reduction of import levies?

In this paragraph the main comments are presented.

Support for the idea of green tariffs

None of the organisations had an official position at this moment. All organisations are interested to discuss the idea further. We received the following initial comments and questions on the idea of introducing trade preferences through green tariffs.

- Green tariffs offer a good political signal to exporting countries to work on sustainable production methods.
- What exactly are the trade advantages of green tariffs?
- One possible argument behind this idea namely to make sustainable produce cheaper for consumers is disputable. In principle, it is fair that consumers pay a higher price for sustainable produce. In stead of making sustainable produce cheaper, conventional produce should be made more expensive, as a first step to internalise externalities in product prices. Eventually, product prices should reflect the production costs (including externalities). As this ideal is not likely to be realised in de short term, green tariffs is a second best option to reduce the price difference between conventional and sustainable production methods.
- Standard setting organisations fear that governments are "taking over" the standards. The result of increased government involvement in standard setting might be that the trade preferences given (in the form of green tariffs) are off-set by increased technical obstacles for international trade in sustainable produce.
- Developing countries will unanimously denounce any moves of this kind as new non-tariff barriers;
- Trade preferences applied to imported products are not applied in a like manner to domestic produced products. In other words: the price difference between sustainable and conventional produce at the domestic market is maintained. As a result international competition in sustainable produce will intensify while international competition in conventional produce is tempered with tariffs.

Robustness of present standards, certification and accreditation programmes

IFOAM, FSC, FLO, MPS are confident that their standards, certification systems and accreditation programmes are good enough as a base for green tariffs.

For the Marine Stewardship Council it is too early to link the MSC-certification system to trade preferences. The Eurogroup for animal welfare indicate that in the field of animal welfare certification-systems are mostly voluntary. The International Office for Epizootics (OIE) is currently just beginning the process of looking at international welfare standards but these will take time to develop and are likely to focus upon minimum rather than high level standards.

5 Opening the debate

We propose to focus the discussion of one hour on the following five questions:

- What exactly do you mean by green tariffs? Do we all have the same understanding?
- Why does your organisation want it? Why should the European Union want it?
- What are negative side effects that could be expected with the introduction of green tariffs?
 - a.-related to the standards, certification systems and accreditation programmes
 - b.-related to international trade in sustainable produce
 - c.-related to development of sustainable process and production methods
- Which countries and actors would you like to benefit most from green tariffs? Which countries and actors do you expect will benefit most from green tariffs?
- Which countries, and actors in and outside the EU are expected to oppose to green tariffs, and why?

On each of the questions we provide some input to get the discussion started.

1. What exactly do you mean by green tariffs? Do we all have the same understanding?
 - The price reductions will depend on the actual tariffs (see table in chapter 1). Processed products tend to have (much) higher import tariffs (tariff escalation).
2. Why does could your organisation be willing it? Why should the European Union be willing it?
 - Political signal towards sustainable process and production methods;
 - Hopes on growth of consumption and production of sustainable produce;

With the implementation of green tariffs, the European Union gains:

 - a mechanism to stimulate the development of sustainable process and production methods world wide (congruent with internal policies and non-trade concerns);
 - more imports of sustainably produced goods. This is likely to be good for consumers in the EU who get a larger diversity of products and lower prices;
 - consumer driven market growth of sustainably produced goods because of a larger diversity of products and lower prices;
 - more global competition in the field of sustainable process and production methods. Global competition will lead to increased efficiency and that will eventually be reflected in the price of sustainable goods and total welfare.

Exporting countries gain:

 - easier access to the EU market for sustainable produce;
 - relatively more export earnings because sustainable produce is sold at added value markets;
 - environmental benefits as a result of sustainable process and production methods.
3. What are negative side effects that could be expected with the introduction of green tariffs?
 - a.-related to the standards, certification systems and accreditation programmes itself
 - Governments taking over the standards
 - b.-related to international trade in sustainable produce
 - Free market access may cause surpluses of sustainable produce that can not be sold as such and increased price fluctuations for sustainable produce.

c.-related to development of sustainable process and production methods

- Global competition leads to changes in location where production takes place, which is not always desirable when a broader sustainability perspective is taken.

4. Which countries and actors would you **like** to benefit most from green tariffs? Which countries and actors do you **expect** will benefit most from green tariffs?

- Desire: exporters and small-scale farmers in LDCs;
- Expectations: importers and consumers in the EU, exporters and large scale export oriented farms in the USA, Japan and the countries of the Cairns group.

5. Which countries, and actors in and outside the EU are expected to oppose to green tariffs, and why?

- Necessary investments in the development a certification scheme for sustainable produce and accreditation of the scheme is a barrier for all countries but most for the poor developing countries;
- The same counts for the finances for participation in multilateral meetings on standards, certification schemes and accreditation of certification schemes. Poor developing countries lack financial resources to participate in such meetings;
- Countries that are unlikely to benefit from green tariffs such as the Net food-importing developing countries (NFIDCs) and the Least Developing Countries (LDCs) which do not have an export oriented agricultural sector;
- The advantages of green tariffs for the Least Developing Countries (LDCs) is limited because they already benefit from free market access under the Everything But Arms Initiative (EBA). For some products such as sugar that have long transition periods under the EBA, green tariffs may be advantageous for a limited number of years;
- Producers in exporting countries may not want to pay for annual costs of certification, and taking the risk of not selling it for a premium price;
- Producers in the EU who fair increased international competition on sustainable produce.

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