

A Study on Eco-Labeling in Fisheries Products as Trade Measure in International Trade Law

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Abstract

Fisheries products have always been regarded as products lacking eco-labels, which not only contravene the right to know of customers but also indirectly encourages inappropriate fishing methods. When a country advocates and promotes the conservation of natural resources and applies eco-labels to certain products to publicize and transmit significant messages, products with such eco-labels may enjoy comparative advantage in the market, which, under the circumstances, may cause non-tariff barriers to trade when it comes to imports introduced to the domestic market. In order to determine whether eco-labels will become the obstruction to entering markets, first, we should identify if the leading role is sponsored by the government or supported by other public laws in that financial support should be given from the government budget since the primary mission is to push the progress of a national task even though the executer is a non-governmental institution. Second, we need to examine if such measure is applicable both domestically and overseas and if it meets the principles of national treatment and most-favored-nation treatment.

From the perspective of resources conservation, life-cycle analysis and PPMs are both essential criteria for the acquirement of eco-labels. From the perspective of trade, the standards for acquiring eco-labels must comply with the regulations set forth in the Annexes of TBT Agreement. The article of accounts for the fact that labeling can be based on something other than on life cycle analysis as indicated in the TBT Agreement. Furthermore, not every labeling is based on PPMs and life cycle analysis does not necessarily cover PPMs. Fishing gears and practices each are a link of the process and each shall be adjusted to suit conditions. Therefore, fishing gears and practices have not been considered to affect the product characteristics, which, under the circumstances, are not subject to the TBT Agreement. Due to the fact that the extent of development and regulations are diverse between each country, imposing the PPM adopted by one nation on other countries might result in indiscreet protection measures that are not allowed by WTO. As the standards concerning the acquirement of eco-labels merely reflect domestic values, there should be a scientific basis for eco-labels under the principles of national treatment and most-favored-nation treatment in order to provide chances for foreign producers so that them could share the same status

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Keywords: By-catch, Eco-Labeling, Government-sponsored schemes, Most Favored Nation, National Treatment

漁產品標章作為貿易措施在國際貿易法之研究

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摘 要

魚是人類主要蛋白質的來源之一，撈捕之目的在獲得商業利益，任何捕魚行為都無法避免意外捕獲。不適當的漁具與漁法經常將意外捕獲的邊際效應，危及整個生態系統健全。漁產品一直被認為是缺乏標示的產品，除無法確保消費者知的權利，更間接鼓勵不適當捕魚的方式。只要不違反自由貿易的宗旨，進口國可利用貿易措施拒絕以不適當捕魚方法獲得之漁產品進入國境內，以降低不適當的捕魚方法損害整體生態的風險。當國家運用特定漁產品標章以宣達保育自然資源政策內容時，具有此標章的產品在市場可能具有相對優勢，若涉及外國相同產品進入國內市場之際，此標章可能構成非關稅障礙。標章是否構成市場進入的障礙，應先認定主導者是否受有國家財政支援或其他公法方式取得地位，因財政支援須以預算的方式為之，雖然預算之強度不如法律，但具有民主正當性，即便是執行者為民間組織，但主要任務是推動國家任務，應是國家行為。其次，再審究該標章有無國內外產品一體適用，以符合國民待遇與最惠國待遇原則。蓋 GATT/WTO 是避免國家行為造成不必要之貿易障礙，不產生歧視之國家措施都是自由貿易所允許。

從資源保育的角度，保護漁業資源的可持續利用成效是取決於生產階段監督和管理方法，生命週期分析法和產品製造方法都是評估生產階段以取得標章的重要基準。但從貿易的角度，標章的取得標準必須符合技術性貿易障礙協定附件之規定，以影響產品最終性質為判斷，不宜割裂條文解釋標章可以擴及非技術性貿易障礙協定所提及之生命週期分析法，畢竟不是所有的標章都必使用產品製造方法為評估標準，生命週期分析法也不必然包含產品製造方法。因地制宜之漁具與漁法只是生命週期分析法其中一項環節，國際實踐認為漁法與漁具是不影響產品最終性質之方法，並非 TBT 協定所規範。因各國發展程度不同，法規也相異，如以標章的方式將把本國的生產方法強加於其他國家，可能導致輕率保護措施的非議。因為標章取得標準的制定往往只反映本國價值觀，取得標章的標準應以科學的依據為基礎，並在國民待遇和最惠國待遇原則之下，提供機會給外國生產者與本國生產者地位相同，參

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與標章制定標準和授予程序，共同提昇技術水準。

關鍵字：意外捕獲、生態標章、政府贊助標章、最惠國待遇原則、國民待遇原則