Volume 4

Research Paper 3: The Impact of Ecolabels and Certification Schemes in Forestry on ASEAN Timber Trade

The Impact of Ecolabels and Certification Schemes in Forestry on ASEAN Timber Trade

Ecolabels and Certification in Forestry – Issues Relevant to Use of Ecolabels in ASEAN and Towards Global Standards

A Project of the AADCP Regional Partnerships Scheme

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Contents

Acronyms

ACP	Africa, Caribbean and Pacific
ADB	Asian Development Bank
AFTA	ASEAN Free Trade Area
ASEAN	Association of South East Asian Nations
CEPT	Common Effective Preferential Tariff
CER	Closer Economic Relations Agreement
DFAT	Australian Department of Foreign Affairs and Trade
ECJ	European Court of Justice
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FOE	Friends of the Earth
FSC	Forest Stewardship Council
GATT	General Agreement on Tariffs and Trade
GPA	World Trade Organization Agreement on Government Procurement
HS	Harmonized System of Tariff Classification
IISD	International Institute for Sustainable Development
ISO	International Standards Organization
ITTA	International Tropical Timber Agreement
ITTO	International Tropical Timber Organization
NAFTA	North American Free Trade Agreement
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Cooperation and Development
PPMs	Non –product related production and processing methods
SAFTA	Singapore Australia Free Trade Agreement
TBT	World Trade Organization Agreement on Technical Barriers to Trade
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Program
US	United States
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWF	World Wide Fund for Nature

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A. Summary

Whilst often touted as effective instruments for environmental protection, eco- labeling schemes can impact upon trade. This is most apparent where they are discriminatory, or where they restrict trade on the basis of process and production methods. The trade impact is felt most where ecolabels must be applied as a condition of access to export markets.

Recent years have seen marked trends in developed countries such as the EU, US and Japan to require compliance with environmental standards for importation into the market, to mandate adherence to environmental standards and eco-label criteria in government public procurement policies and to increasing use "life cycle analysis"[i] in ecolabel criteria whereby the environmental impact of a product is assessed at each stage of its life cycle in order to determine whether it has met an environmental standard. This has certainly been the case with the forestry sector where certification of sustainable forest management has become a greater concern in recent years.

The trade impact of ecolabels and certification schemes matters when substantial trade is at stake. ASEAN trade in timber products in 2000 was worth about $US 24 billion. Exports were worth about $US 19 billion. ASEAN countries such as Indonesia, Malaysia and Myanmar are major exporters of timber products. Exports in Vietnam, Myanmar and Cambodia appear to be growing. Developed countries such as Japan, the US, and the EU are the major export markets for ASEAN products. In 2000 their shares of ASEAN's timber exports were over 20 percent, 13.7 percent and 12.8 percent respectively. Although China is a growing market, these three developed countries still account for the majority of ASEAN's timber exports.

Where the impact has the effect of creating trade restrictions, the rules of bilateral, regional and multilateral agreements to liberalize trade apply. The World Trade Organization (WTO) is the institution set up to regulate international trade. It sets out legally binding rules that govern what is and what is not allowed in the conduct of trade between its members. The WTO rules distinguish between mandatory standards - those that must be complied with as a matter of law, for example in order to import products into a market, and those which are voluntary - where it becomes a commercial decision of the producer to comply with the standard or not. It requires that mandatory standards not create unnecessary trade barriers. The WTO does not permit mandatory standards which discriminate among importers and exporters and it is unlikely that mandatory standards which regulate how products are processed would be permitted under WTO rules. It is not clear how its rules apply to such standards where they are voluntary. Where ecolabeling and certification schemes breach WTO rules, members can challenge them and require their removal.

The ASEAN Agreement to implement a Common Effective Preferential Tariff (CEPT) Arrangement also requires parties to eliminate non-tariff measures for products which are subject to CEPT commitments. This would include mandatory standards for ecolabels which impeded trade.

Despite the WTO rules, there has been an inclination by the EU and also the US to impose mandatory restrictions in the form of environmental standards as a condition for market access in bilateral trade agreements. While this action may or may not be contrary to WTO rules, ASEAN countries face the dilemma of being refused market access where these standards are not met. There is some indication that Japan may also consider imposing such restrictions in bilateral trade.

Evidence that forestry products are produced according to sustainable standards has spawned requirements for ecolabels attesting to this. Some retailers of timber products (mostly in Europe, but to a degree in the United States) now require suppliers to affix such ecolabels. Where timber producers want to supply to these markets, it is necessary for them to develop sustainable forestry practices which qualify for such labels. Where the market demands evidence of such standards, producers need to meet them if they want to supply. The decision to do this is solely commercial. However when governments start to mandate compliance with such standards as a condition for export, international trade laws restrict the scope to use such measures. Broader questions about the effectiveness and desirability of use of trade restrictions to secure non-trade goals or to meet environmental objectives also arise.

A more recent trend, particularly in the EU and to a lesser extent Japan, has been to seek to address the issue of illegal logging through ecolabels and certification schemes by imposing bans if timber is not certified as legally produced. It is a widely accepted and general principle that measures in trade agreements should not be used as a substitute for the failure of a country to enforce its national laws. It is an article of faith in the WTO, and also a principle in the UN, that trade measures should not be used for non-trade purposes. When products are produced illegally, the solution is to improve enforcement in the other country. To illustrate the point, an approach by the EU which would not entail trade measures would be to provide technical assistance to improve domestic law enforcement

It is the function of an ecolabel to demonstrate that timber products have complied with a requisite environmental standard, rather than to attempt to enforce national laws governing the production of timber in the exporting country. The former can, when erected according to sound principles of regulation, form part of effective systems for standards and certification in the forestry sector. The latter can, when developed according to an assessment of the exporter's compliance with its own forestry laws by another, amount to extraterritorial imposition of standards by one country on another. When a trading partner makes access to its export market conditional on improving enforcement of domestic laws, it is inviting the exporting country to surrender a degree of national sovereignty (in this case, enforcing forestry law) to another country. It is the function of national law enforcement agencies in the country concerned to ensure that national laws are abided by, not the governments of trading partners. Such an approach is not in the interest of effective ecolabeling and certification.

Although not readily quantifiable (as yet), the impact of these measures is important in qualitative terms where trade is significant, particularly where higher value-added timber products are involved, as the effect of restriction on trade is magnified. Given the amount and value of ASEAN trade involved and the direction of ASEAN exports, it appears that the impact on trade of such measures is not trivial, and depending on the product involved, could be substantial.

ASEAN countries therefore have a clear interest in ensuring that both access to markets for timber products is protected from measures that may breach WTO rules and that ASEAN systems for certification and ecolabels in the forestry sector are based on sound principles of regulation which do not unduly restrict trade in timber products.

B. Introduction

Ecolabels provide the means to verify compliance or conformance with a standard. For the purpose of use of standards in trade and commerce, a distinction is made between use of those in the private sphere, and those that are regulated by governments.

Standards in the private sphere are developed principally for commercial reasons and to facilitate trade and commerce. They are usually voluntary. Ecolabeling schemes avail producers of the opportunity to display an ecolabel on their product for sale in the market place where they perceive this to offer a commercial or market advantage because the label conveys certain information about the product concerned.

These standards differ from those that are regulated by governments which are mandated by government laws or legislation. A mandatory ecolabeling scheme requires products to display an ecolabel in order for them to be sold in the market. The scheme could apply only to imported foreign goods, only to domestic goods or could apply equally to both foreign and domestic goods.

Traditionally, standards have been mandated to protect health and safety. An increasing trend is to mandate them for environmental protection.

Standards can impact on trade where they restrict the movement of goods across international markets. The impact is greater where the standards are mandatory under government regulation, than where they are voluntary. Regulation of trade at the international level is concerned only with restrictions on trade resulting from government action. They are the primary focus of this report.

Actions of private commercial entities generally concern commercial arrangements between private entities as part of a functioning market for trade in goods and services, rather than actions of governments that are subject to certain restraints at the international level to ensure the regulation does not unduly restrain trade. They are taken as given and are not considered as part of this report

C. Global and ASEAN patterns of trade in forestry products

I. Methodology

Patterns of timber trade analyzed in this report cover selected timber products of economic and trade interest to ASEAN. These are products that are traded by ASEAN in significant amounts in value terms ($US) or mass (metric tons). This report does not purport to provide a comprehensive or exhaustive analysis of global trade in all timber and timber products.

The statistics were obtained from the Australian Department of Foreign Affairs and Trade (DFAT) and are based on statistics reported to DFAT and the United Nations COMTRADE data base. Data used is organized by product categories according to the Harmonized System of Tariff Classification (HS codes). They include HS code: 44 – wood and articles of wood charcoal; 45- cork and articles of cork; 46 –manufactures of straw; 47- pulp of wood of other fibrous celullosic material; 48 – paper and paperboard; 49 – printed books, newspapers and other articles of the printing industry; 94 –timber furniture[ii].

The consultant is aware of other data available from the Food and Agriculture Organization of the United Nations (FAO) and International Tropical Timber Organization (ITTO) which analyses data based on un-manufactured wood such as logs, sawnwood, veneer and plywood, but has chosen to use HS data where possible in order to capture the higher value added for timber products including furniture, paper and paperboard and manufactures of straw.

The year 2000 was selected as the base for the analysis, as the most recent date for which sufficient and the most complete data was available and reported from most countries. Data for 1995 was also included where possible.

Any analysis of trade flows involves inherent difficulties[iii] which should be borne in mind when considering the analysis below. Despite this, the consultant considers the data analyzed to be the most reliable and comprehensive statistical data available and capable of providing a reasonably accurate picture of global and ASEAN trade patterns in timber products.

II. Global patterns of trade in forestry products

a) Overview of global trade in timber products

Total trade flows

The value of total reported exports in selected timber products in the year 2000 was approximately $US 296 billion. Exports were significant, accounting for about 4.7 percent of world trade, which in 2000 was $US 6,186 billion[1]. Global trade flows in timber products increased between 1995 and 2000 in value terms, with imports experiencing a slightly higher rate of increase than exports. Export value was 10.6 percent lower in 1995 at $US 264.5 billion. This correlates with other statistical data and academic research which supports a

[1] *WTO Trade Statistics*, 2000

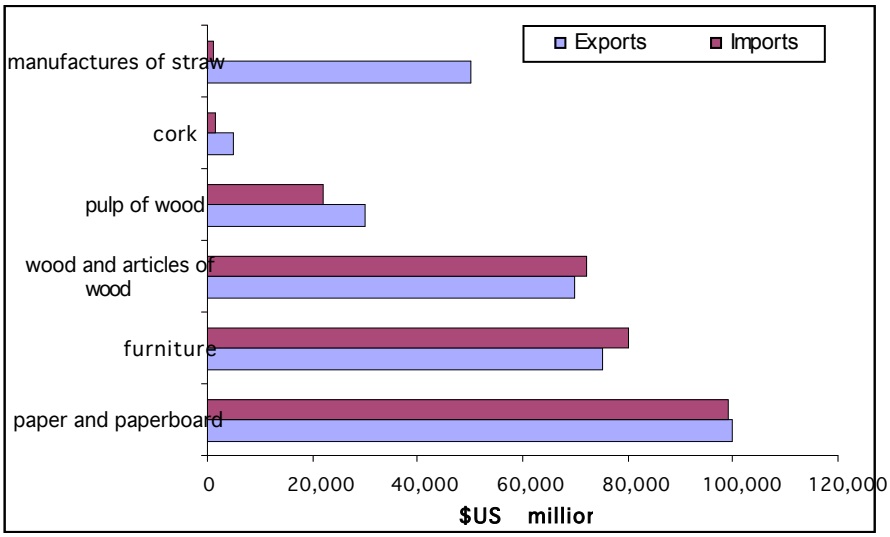
wider trend in rising export volumes and a general expansion in the level of exports for most timber products in absolute terms over this period[2].

Trade by product

The most highly traded timber products globally in 2000 were:

1. Paper and paper board (exports $US 100 billion, imports $US 99 billion);
2. Furniture (exports $US 75 billion, imports $US 80 billion);
3. Wood and articles of wood charcoal (exports about $US 70 billion, imports $US $72 billion);
4. Pulp of wood and printed books (exports each approximately $US 30 billion, imports each approximately $US 22 billion);
5. Cork (exports less than $US 5 billion, imports $US 1.5 billion);
6. Manufactures of straw (exports less than $US 5 billion, imports $US 1 billion).

Fig.1 Share of selected timber products by value of global exports, 2000

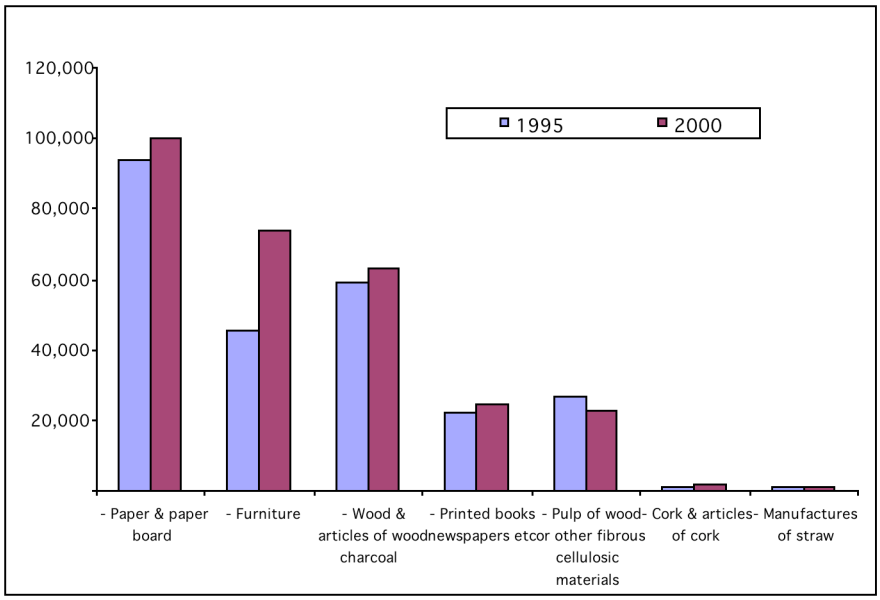


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

The pattern was similar in 1995, however, trade in furniture products grew by over $US 40 billion between 1995 and 2000 (an increase of 40 percent on 1995 levels), overtaking wood articles as the second most highly traded product. See Figures 2 and 3 below.

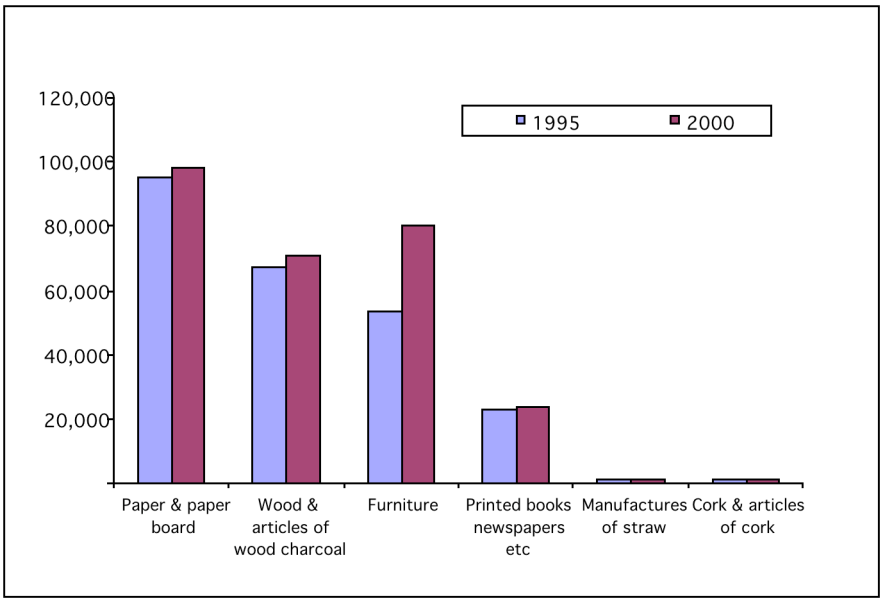
[2] See for example, *International Market Access for Forest Products: Post Uruguay Round Issues* by Steven Ruddell (Michigan State University), James A Stevens (United States Forest Service) and I.J Bourke (FAO) at http://www.fao.org accessed 17/12/2003.

Fig.2 Total global exports of selected timber products by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Fig 3. Total global imports of selected timber products by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Data by volume was not available for all categories of timber product for the purpose of comparison.

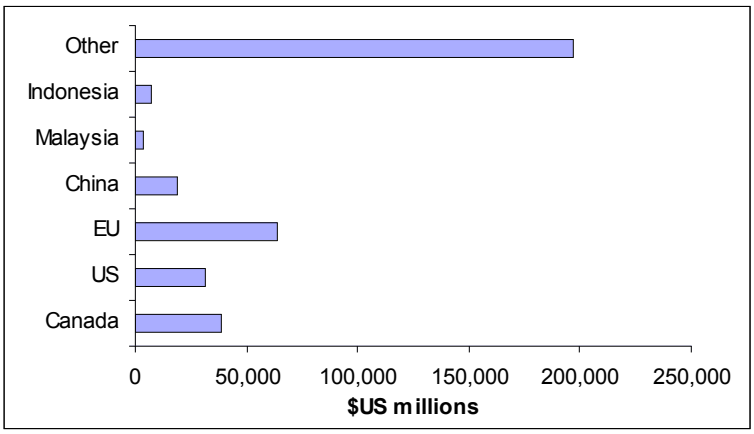
Trade by country

Although global timber trade involves many countries, it is dominated by a relatively few developed countries. Several countries account for the bulk of both exports and imports: namely the US, Europe, Japan and Canada. China appears to be emerging as a growing export market and import supplier. This is most pronounced in paper and paperboard where North America, Europe and Canada account for the majority of both imports and exports. Only selected products such as wood and wood articles and pulp of wood are dominated by developing countries, primarily in Asia (Indonesia and Malaysia).

In 2000, the main exporters of the most highly traded timber products in aggregate were Canada, the US and the EU. Germany, Finland, Sweden, Italy and France were important European exporters. China, Malaysia and Indonesia were the 8th, 9th and 10th largest exporters respectively (See Figure 4 below). In 1995 the pattern of largest exporters was the same, however, the share of the top five was smaller - China's share increased and the share of Indonesia and Malaysia decreased slightly. Other countries also expanded their share in 2000 compared to 1995.[3] (See also Figure 5 below)

Major exporters differed slightly depending on the timber product. In value terms, major global exporters for pulp and paper board in 2000 were the US ($US 13 billion), Canada ($US 12 billion) and Germany ($US 11 billion). Canada ($US 14 billion), the US ($US 7 billion), Indonesia ($US 5 billion) and Malaysia ($US 4 billion) were the four largest exporters of wood and wood articles. China was by far the largest furniture exporter ($US 16 billion) in 2000, followed by Italy ($US 8 billion) and the US ($US 7 billion). Exports of wood pulp were primarily from Canada ($US 7 billion) and the US ($US 6 billion). Indonesia was the 6th largest exporter ($US 1.5 billion).

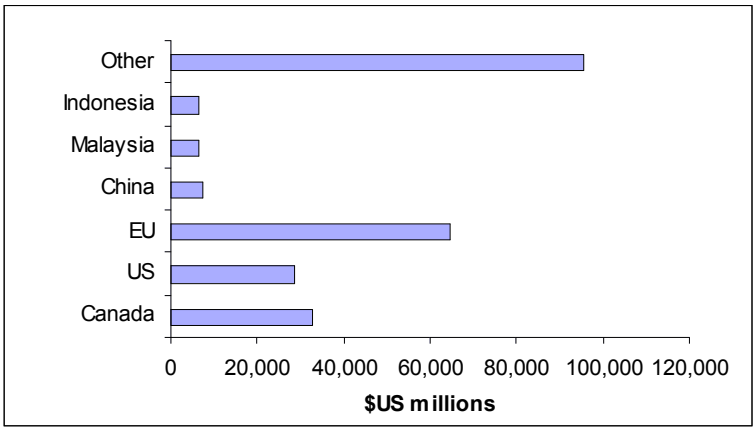
Fig.4 Exporters by share of value for four most traded timber products, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

[3] This included Austria, Netherlands, Taiwan, Russia, Mexico, Brazil, Poland Chile and Portugal in aggregate and in decreasing order of importance.

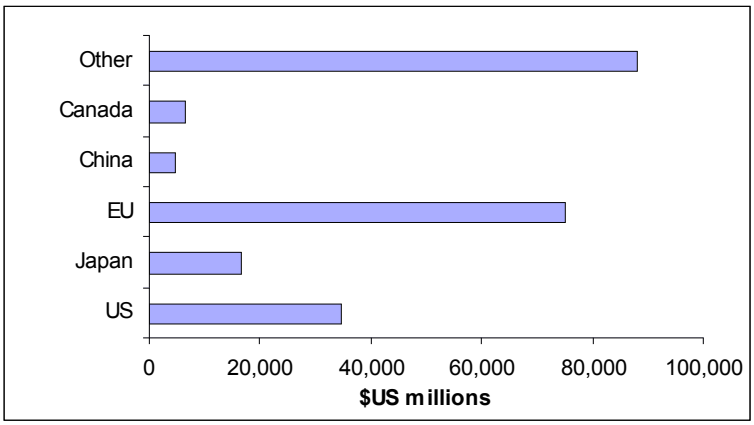
Fig. 5 Exporters by share of value for four most traded timber products, 1995



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

The major importers of selected timber products in 2000 were the US, Europe[4], Japan, Canada and China. This pattern corresponds closely with the import markets for paper and paper board, furniture products and pulp of wood. The US and Japan were the largest importers of wood and articles of wood and also manufactures of straw products. See Figure 6 below.

Fig.6 Importers by share of value for four most traded timber products, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Despite the dominance of global trade by a few developed countries, there is increasing trade among developing countries[5]. In addition to major flows from Asia to Japan, increasing trade

[4] including Germany, the UK, France, Italy and to a less extent the Netherlands

[5] See Bourke and Leitch, Trade Restrictions and Their Impact on International Trade in Forest Products, FAO, September 2000.

is taking place between neighbouring countries such as China, Korea, Indonesia, Malaysia and Myanmar.

More detail on global patterns of timber trade by product, by destination of export and origin of import is attached at Annex 1.

III. ASEAN trade in forestry products

a) Overview of ASEAN-wide trade in timber products

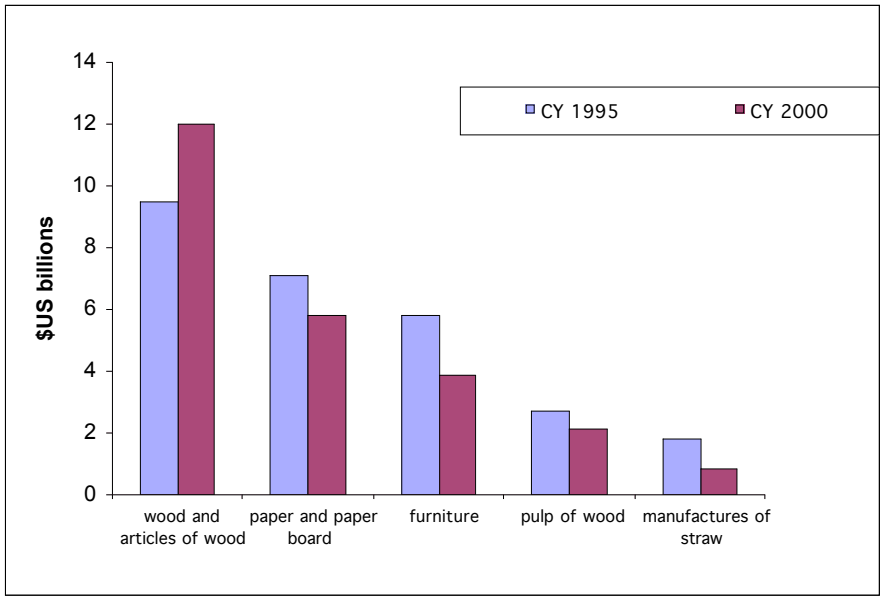
Total ASEAN trade flows

The value of total ASEAN trade (imports plus exports) in selected timber products in the year 2000 was US $24.63 billion. This was an 8.4 percent decrease from 1995 levels. Total volume in metric tons was 44,044,442 in 2000 compared with 30,077,410 in 1995, representing an increase of 13,967,032 metric tons from 1995 levels.

Total exports of most traded timber products totaled $US 19.074 billion in 2000. Imports in most traded products for the same year were $US 4.9 billion.

Total trade by product in value terms for 2000 was dominated by wood and wood articles ($US 12 billion) followed by paper and paper board ($US 5.8 billion), furniture ($US 3.9 billion), pulp of wood ($US 2.1 billion) and manufactures of straw ($US 83 million). See Figure 7 below.

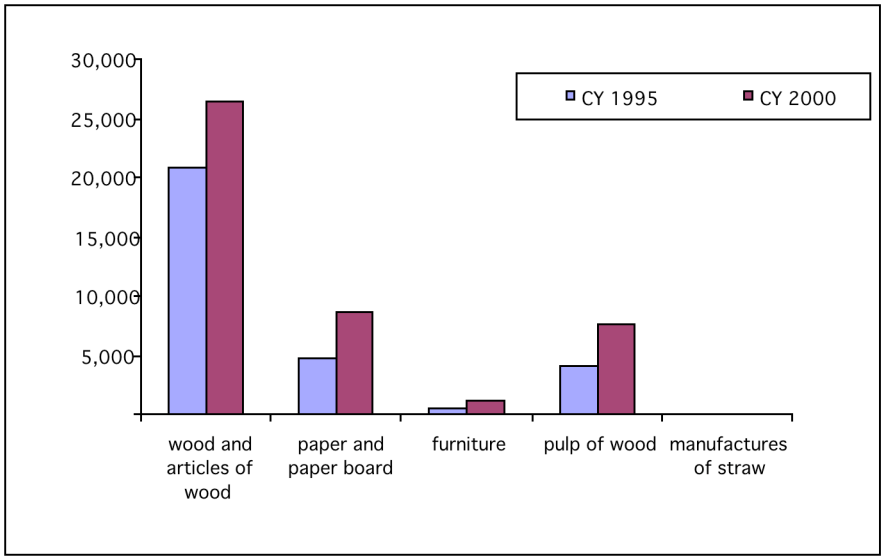
Fig.7 Total ASEAN trade in selected timber products by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Total trade by product by mass for 2000 was as follows in Figure 8:

Fig.8 Total ASEAN trade in selected timber products by mass, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Compared with 1995, trade declined for all products except wood articles in terms of value, but increased in volume for all products, most notably wood and wood articles, paper and paperboard, and pulp of wood.

ASEAN timber trade by country

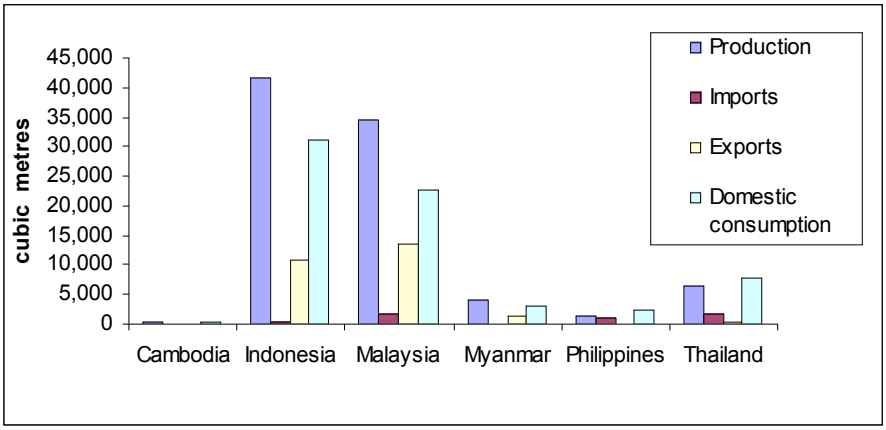
Trade by mass

Details of trade by mass by ASEAN country were not available using the data above. Data on trade of tropical timber producing countries analyzed below is from the ITTO[iv].

Figure 9 below depicts ASEAN production, trade and consumption by mass of logs, sawnwood, veneer wood and plywood for the year 2000. Major ASEAN producers of timber in 2000 by mass were Indonesia, Malaysia, Thailand, Myanmar, Philippines and Cambodia. Major ASEAN exporters were Malaysia (14,000 metric tons), and Indonesia (10,000 metric tons) followed by Myanmar (1000 metric tons, whilst major importers were Thailand (1,570 metric tons), Malaysia (1,543 metric tons) and the Philippines (1, 072 metric tons). The greatest consumers of timber products were Indonesia (31,213 metric tons), Malaysia (22,619 metric tons), Thailand (7,796 metric tons) and the Philippines (2,390 metric tons).

No statistics were available for Laos or Vietnam.

Fig.9 ASEAN production, trade and consumption of logs, sawn wood, veneer wood and plywood by mass, 2000



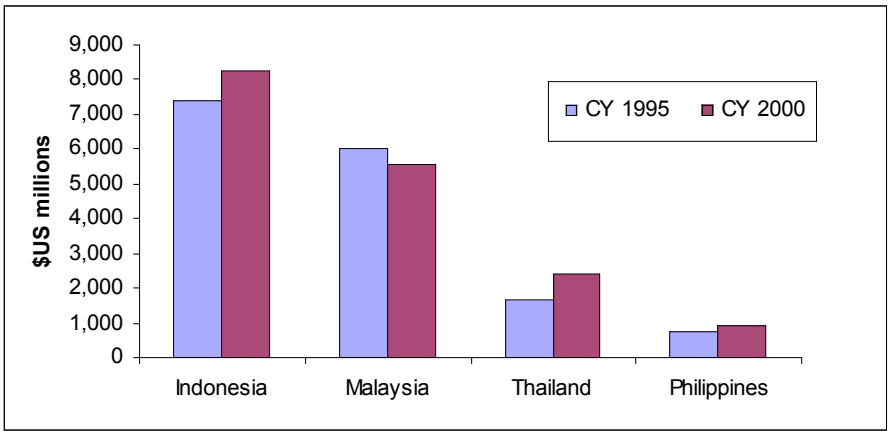
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Trade by value

Using HS data, in value terms, Indonesia and Malaysia were the two largest ASEAN exporters of selected timber products with exports of $US 8 billion and $US 5.5 billion in 2000 respectively. Thailand and the Philippines recorded lower levels in value terms ($US 2.2 billion and $US 1 billion respectively). See Figure 10 below.

Given that the total value of ASEAN exports for 2000 based on HS codes is determined to be about $19 billion, approximately $US 2.3 billion may be accounted for by exports from other ASEAN timber producing members not reporting data on HS codes. These countries include Cambodia, Vietnam, Laos and Myanmar.

Fig.10 ASEAN exports of selected timber products by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Using ITTO data, and based on a breakdown of timber trade by product categories including logs, sawn wood, veneer wood and plywood (for all timber including tropical timber), a picture of trade by value of ASEAN country including Cambodia and Myanmar was possible. It revealed a similar pattern of exports as depicted by HS data, although exports from Myanmar were significant (higher than Philippines and Thailand). Cambodia also recorded some exports.

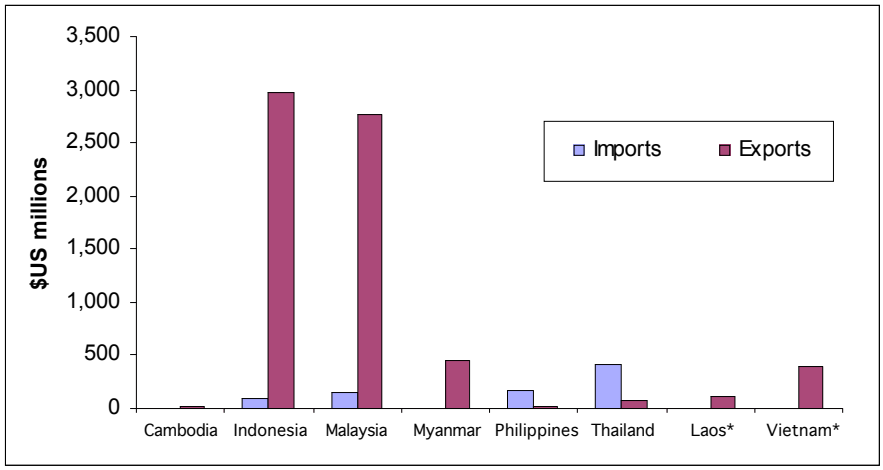
Data for Laos and Vietnam were more limited. Information for Laos was available from the IMF using data from Lao authorities and staff estimates only for 1998. It includes logs, timber and semi-finished and finished products.

Data for Vietnam was also available only from the Ministry of Agriculture and Rural Development[6] for the year 2001. Exports of wood and forest products included wood and wood handicrafts, rattan and bamboo products.

Figure 11 below reveals ASEAN trade in wood products using the data noted above.

Although the ITTO data is not directly comparable to that by HS codes it does reveal that ASEAN timber trade may be understated without adequate statistical data based on HS codes for Cambodia, Myanmar and Laos. Notably value recorded according to ITTO product categories revealed much lower levels of exports in value terms than that based on HS codes. This can be attributed to higher value-added included in some timber products.

Fig.11 ASEAN trade of all timber by value, year 2000*



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

*Data for Laos is for year 1998 (IMF), data for Vietnam is for year 2001(MARD)

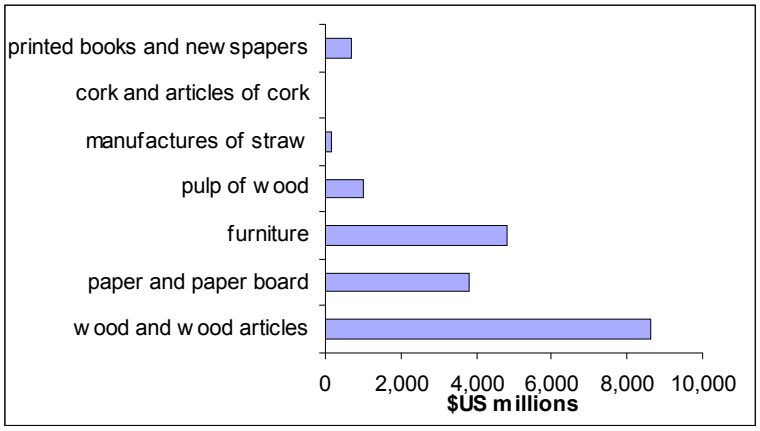
More detail of timber trade by country is noted below.

[6] *Annual Report, Vietnamese Agriculture in 2001*, The Ministry of Agriculture and Rural Development.

ASEAN trade by timber product

The main timber products exported by ASEAN by value in 2000 were wood and articles of wood ($US 8.6 billion), paper and paperboard ($US 3.8 billion), pulp of wood ($US 987 million), furniture ($US 4.8 billion), manufactures of straw ($US 179 million), cork and cork articles ($US 2 million) and printed books and newspapers ($US 706 million). See Figure 12 below.

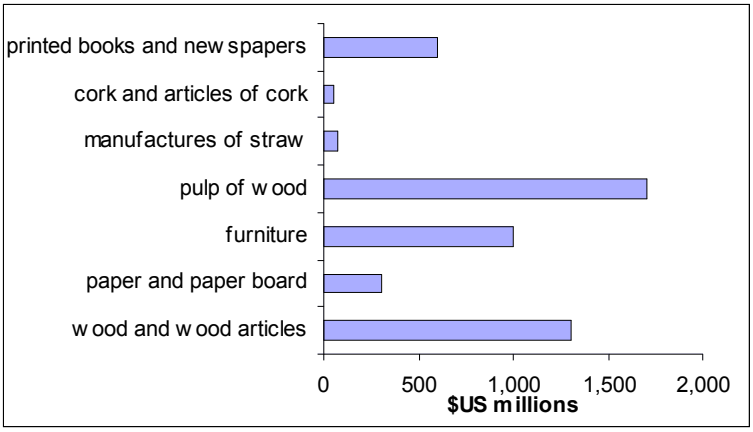
Fig.12 Share of selected timber products of total ASEAN exports by value, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Predominant ASEAN imports of timber products in 2000 were wood and articles of wood ($US 1.3 billion), paper and paperboard ($US 310 million), pulp of wood ($US 1.7 billion), furniture ($US 1 billion) and printed books and newspapers ($US 600 million). See Figure 13 below.

Fig.13 Share of selected timber products of all ASEAN imports by value, 2000



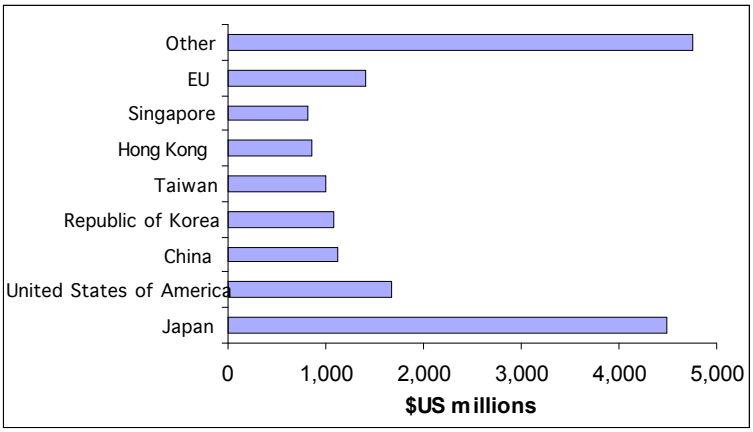
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Destination and origin of ASEAN trade

In 2000 the main export destinations for the most highly traded ASEAN timber products in aggregate were Japan ($US 3.96 billion) and the US ($US 2.62 billion), followed by Europe ($US 2.45 billion), China ($US 1.44 billion), Singapore and Hong Kong. Important European markets were the Netherlands and the UK. Taiwan and Korea were also important. Together Japan, the US, the EU and China accounted for over 54 percent of ASEAN's exports (See Figure 14 below). Export markets did not change significantly since 1995, although there has been a marked growth in the China market since 1995.

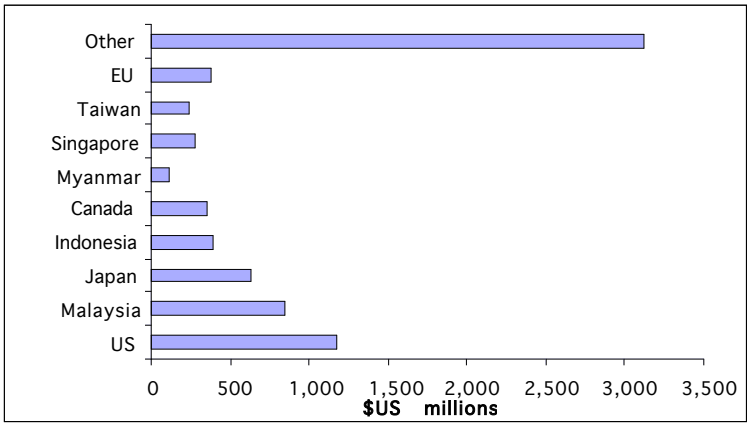
Export destinations varied according to the timber product. For wood and wood articles, the main export markets were Japan, USA and China. For pulp of wood, China, Korea and Japan were the main destinations. For furniture the US and Japan were important, with some exports to the EU and Asia Pacific. Exports of paper and paper board went to Malaysia, Singapore, Hong Kong and Japan and were also spread amongst China, the US and Taiwan.

Fig.14 Destination of ASEAN exports of top four most traded products by value, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Fig.15 Origin of ASEAN imports of top four most traded products by value, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

As noted by Figure 15 above, major suppliers of imports were Europe, the US, Canada and other countries[7] including Malaysia and Indonesia, Myanmar and Laos.

Further detail of ASEAN trade by product, and by destination and supplier is at Annex 1.

[7] Note, the "Europe" categories in the above graphs may omit small volumes from European countries that do not fall into the top ten export destinations and fall instead into the "Other" category, in these cases the relative volumes are insignificant.

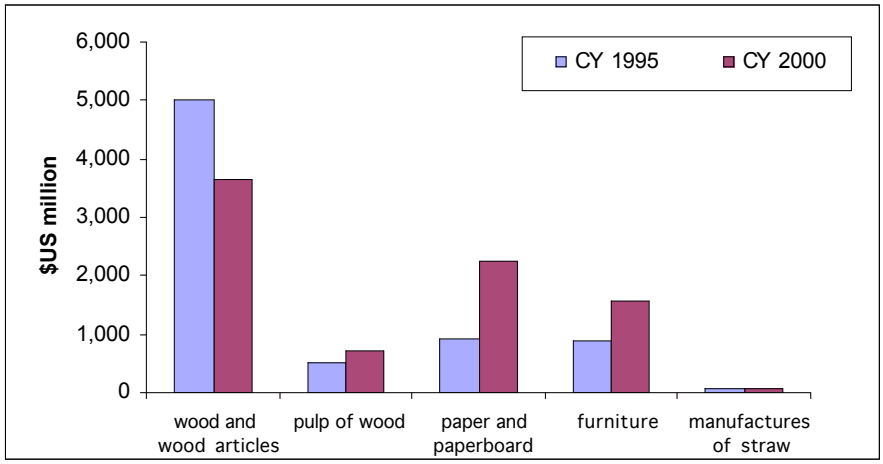
b) Overview of timber trade by individual ASEAN country

Indonesia

Total exports of selected timber products for Indonesia in the year 2000 was about $US 8.2 billion. In 1995, exports were slightly lower at $US 7.4 billion. Total imports were $US 1.5 billion in 2000 and almost $US 1.4 billion in 1995.

Indonesia's major exports reported in 2000, by value, were wood and wood articles ($US 3.6 billion), paper and paperboard ($US 2.2 billion) and furniture ($US 1.5 billion). Pulp of wood and manufactures of straw were also important exports. All categories recorded higher value in 2000 than in 1995, except for wood and wood articles. Paper and paperboard increased by about $US 1 billion between 1995 and 2000. See Figure 16 below.

Fig.16 Indonesian exports by selected timber product by value, 1995 and 2000



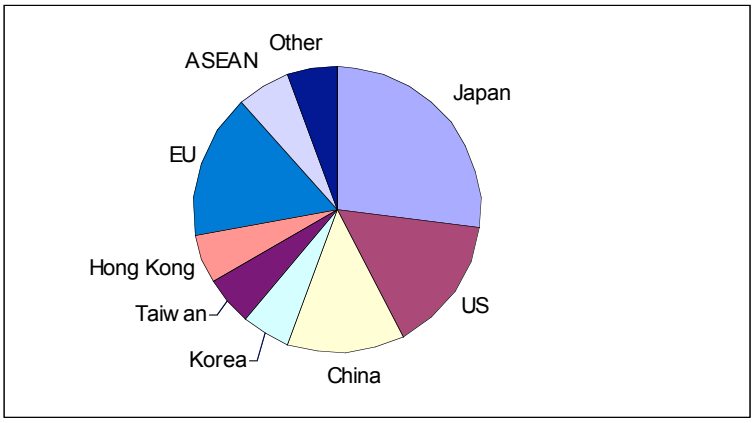
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Major Indonesian imports in 2000 were pulp of wood ($US 1 billion) and paper and paper board ($US 310 million). In 1995, imports of pulp of wood accounted for $US 882 million. Imports of paper and paper board were slightly higher at $US 332 million.

Major export markets for Indonesia in 2000 in terms of value were Japan ($US 1.5 billion), the US ($US 1 billion) and the EU ($US 1 billion) followed by China ($ 866 million) Korea ($US 358 million) and Hong Kong ($US 366 million). Important markets in the EU were the Netherlands ($US 291 million) the UK ($US 204 million) and Germany ($US 213 million). Belgium, Italy, Spain and France were also export destinations[8]. See Figure 17 below.

[8] Other" ASEAN markets were Malaysia ($US 165 million) and Singapore ($US 220 million). "Other" export destinations were Australia, India and Turkey.

Fig.17 Destination of Indonesian exports of selected timber products by value, 2000



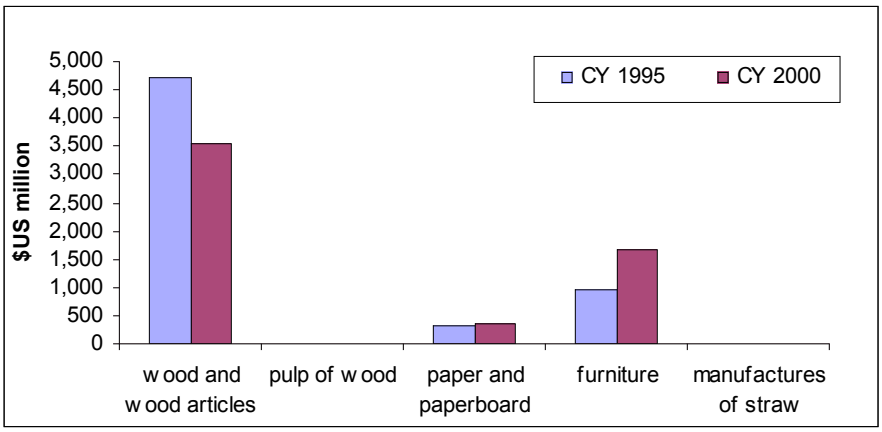
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Malaysia

Total Malaysian exports of selected timber products in 2000 were $US 5.5 billion. Imports were $US 1.9 billion. In 1995, both exports were slightly higher at $US 6 billion and imports were similar.

Major exports in 2000 in value terms were wood and wood articles ($US 3.5 billion), furniture ($US 1.65 billion) and paper and paperboard ($US 372 million). In 1995, the same products were important, although export value was higher at $US 4.5 billion for wood and wood articles, but lower for furniture ($US 963 million). See Figure 18 below.

Fig.18 Malaysian exports of selected timber products by value, 1995 and 2000

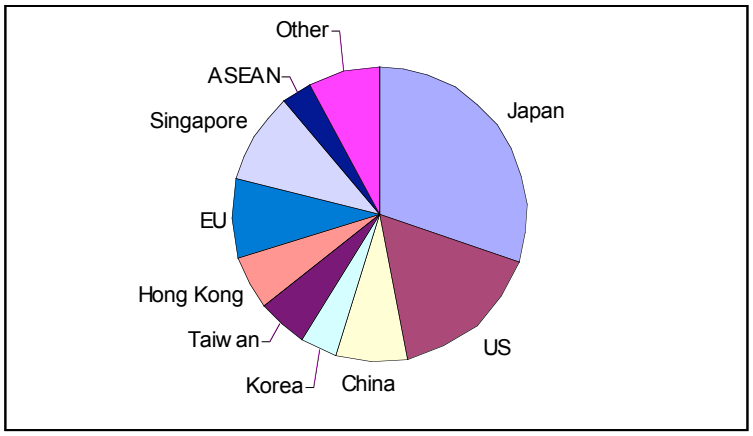


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Imports were dominated by paper and paperboard ($US 1.1 billion), wood and wood articles ($US 272 million) and furniture ($US 153 million). The pattern was similar in 1995.

As Figure 19 depicts, major export markets in 2000 in value terms were Japan ($US1.3 billion), the US ($US 752 million) and Singapore ($US 453 million). Other important markets were the EU ($US381 million), China ($US 350 million) and Hong Kong ($US 268 million). "Other" ASEAN countries including Indonesia, Thailand, Vietnam and Brunei were important.

Fig.19 Destination of Malaysian exports in selected timber products by value, 2000

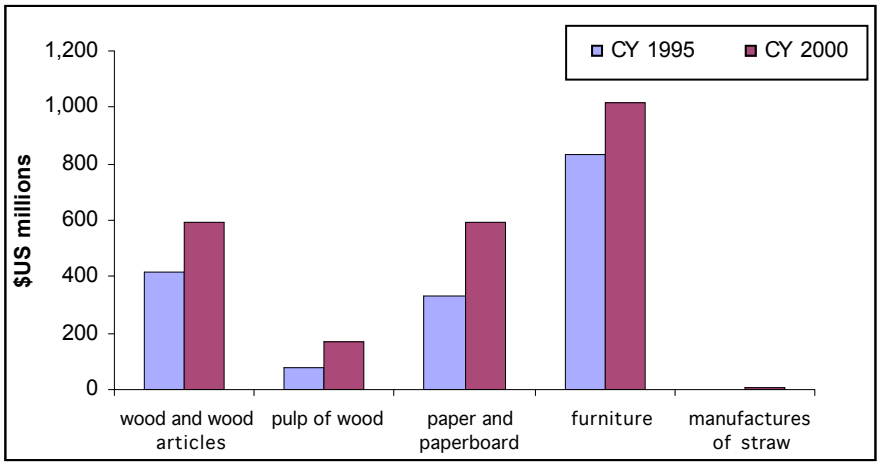


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Thailand

Total value of Thai exports of selected timber products in 2000 was $US 2.38 billion. Imports were valued at $US 1.46 billion. Compared with 1995 values, exports increased by $US 730 million and imports decreased by $US 117 million. Major timber products exported by Thailand in 2000 (in value terms) were furniture ($US 1 billion), wood and wood articles ($US 594 million) and paper and paperboard ($US 593 million). Exports of all products increased in value terms since 1995, with paper and paperboard showing the largest increase. See Figure 20 below.

Fig.20 Thailand exports of selected timber products by value, 1995 and 2000

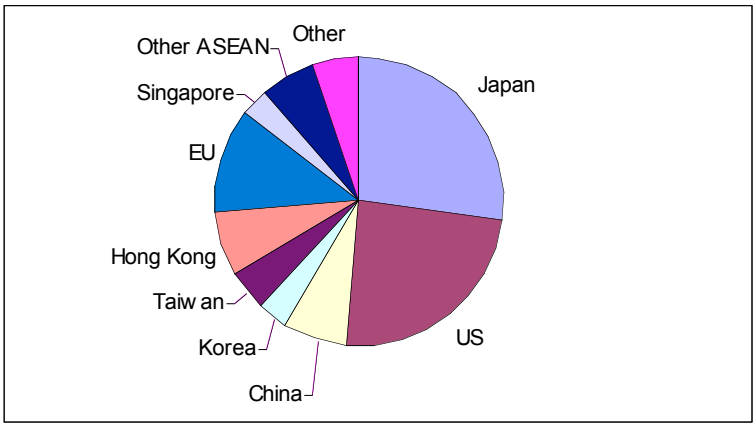


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Thai imports of selected timber products in 2000 were mainly paper and paperboard ($US 555 million), pulp of wood ($US 425 million) and wood and wood articles ($US 402 million. In 1995, imports of wood and wood articles were much higher ($US 1.1 billion) as were paper and paperboard ($US 778 million) and pulp of wood ($US 525 million).

Major export markets in 2000 in terms of value were Japan ($US 544 million), the US ($US 485 million) and the EU ($US 240 million). Hong Kong ($US 142 million), China ($US 143 million) and Taiwan were also important ($US 92 million). Exports to "other ASEAN" countries were to Malaysia, Philippines, Indonesia, Myanmar, Cambodia and Laos[9]. See Figure 21 below.

Fig.21 Destination of Thai exports of selected timber products by value, 2000



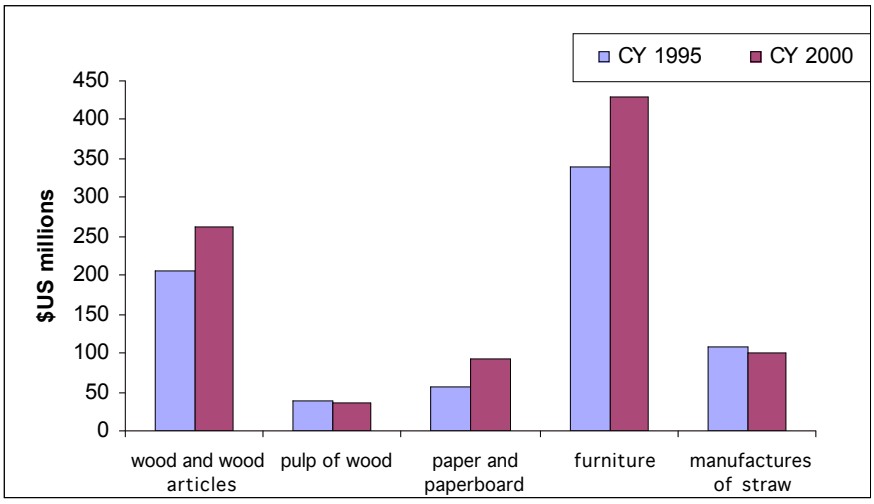
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Philippines

Total exports of the Philippines of selected timber products by value in 2000 were $US 922 million. Imports were $US 870 million. In 1995, exports were worth less at $US 749 million. Imports were $US 985 million. Major exports of timber products in 2000 were furniture ($US 428 million), followed by wood and wood articles ($US 262 million) and manufactures of straw ($US 101 million). Exports in 1995 reflected a similar pattern, with lower value. See Figure 22 below.

[9] "Other" countries of importance were Canada and Australia.

Fig.22 Philippines exports of selected timber products by value, 1995 and 2000

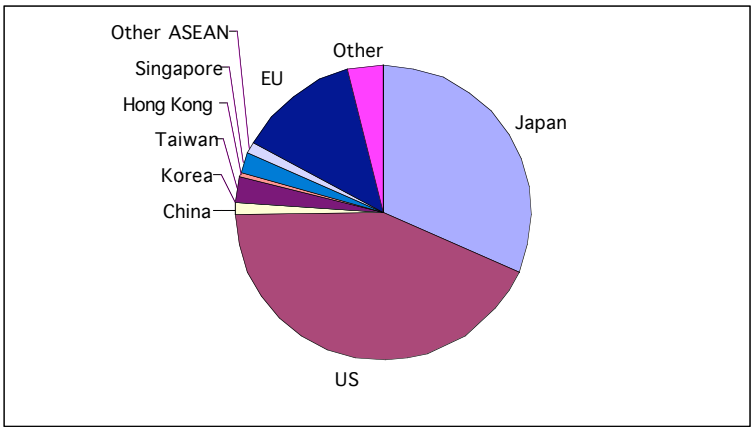


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

The main Philippine imports of timber products by value in 2000 were paper and paper board, wood and wood articles and pulp of wood. In 1995 imports recorded similar value, however, imports of wood and wood articles were about $US 149 million higher.

Major export markets in 2000 in terms of value were the US ($US 365 million), Japan ($US 271 million), and the EU ($US 114 million). Other important markets were Taiwan ($US 24 million) and Singapore ($US 18 million). Exports to "other ASEAN" countries were less important in terms of value. See Figure 23 below.

Fig.23 Destination of Philippines exports in selected timber products by value, 2000



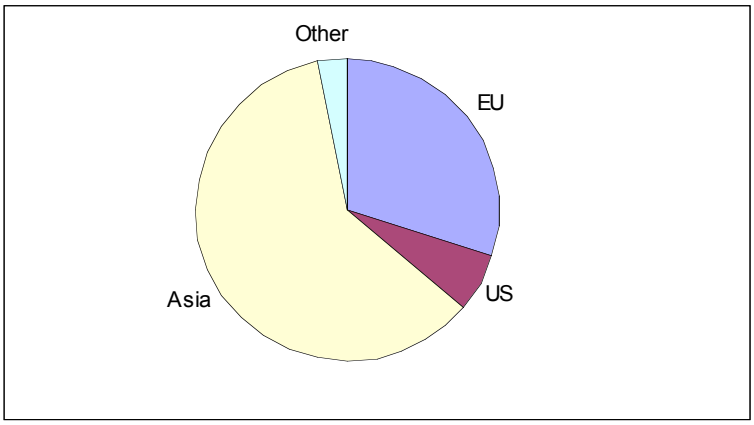
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Vietnam

The following statistics for Vietnam were obtained from the Ministry of Agriculture and Rural Development[10]. No statistics for Vietnam were available from DFAT COMTRADE data, the ITTO or the ADB. Exports of wood and forest products in 2001 was $US 391 million. This included wood and wood handicrafts, rattan and bamboo products. This was a 35.8 percent increase on value for the year 2000.

Export markets for wood and forest products in 2001 were dominated by Asia, which accounted for 61 percent, primarily comprising Taiwan and Japan. Europe was the second largest market, accounting for 30 percent, the EU 26 percent. See Figure 24 below.

Fig.24 Destination of Vietnam exports of wood and forest products by value 2001



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Laos, Cambodia and Myanmar

Data on timber trade for Laos, Cambodia and Myanmar were even more limited. Whilst basic data by value is noted below for exports and imports, no statistics on direction of timber trade or trade by product was available.

According to IMF data,[11] Lao exports of wood products in 1998 were $US 115.4 million. According to ADB data, in 1999 they were $US 77 million[12]. Notably exports fluctuate according to world prices, in 1996 they were valued at $124.6 million due to changes in the price on world markets for Indonesian timber. Vietnam is the most important export market for Lao timber products[13].

[10] *Annual Report, Vietnamese Agriculture in 2001*, The Ministry of Agriculture and Rural Development.

[11] IMF, based on data from Lao authorities and staff estimates

[12] Asian Development Bank, *Key Indicators of Developing Asian and Pacific Countries 2000*, Volume 31, available at http://www.adb.org .

[13] See Laos PDR, Memorandum on Foreign Trade submitted to the World Trade Organization, 1998, Part II.3.

Cambodian timber exports in 1999 were $US 73.5 million[14] and imports $US 1 million.[15] Myanmar's exports of timber products of teak and other hardwood in 1999 was $US 789 million[16]. This figure does not include value added products such as furniture or pulp and paper.

[14] *Ibid.*

[15] FAOSTAT. See http://www.fao.org.

[16] Asian Development Bank Key Indicators of Developing Asian and Pacific Countries 2000, Volume 31, available at http://www.adb.org .

D. Ecolabels and international trade

I. Ecolabels and international trade – the international legal dimension

The institution set up to regulate international trade is the World Trade Organization (WTO). Its purpose is to liberalize trade among its members so that the market can work to achieve the policy goals established for the system. It does this by constraining governments from imposing a variety of measures, including standards that restrain and distort international trade[v]. The WTO also makes a distinction between mandatory and voluntary standards.

International trade is also regulated through bilateral and regional trade agreements between countries. For ASEAN countries, this includes the ASEAN Free Trade Area (AFTA).

The WTO - rules and principles pertaining to ecolabels

The WTO is the most important legal instrument applicable ecolabeling schemes and trade. The WTO Agreement and its annexes create a legally binding institutional framework for the conduct of trade relations among its members[17]. WTO rules are legally binding in the sense that where one member breaches them, offending measures can be challenged and removed under the dispute settlement system.

GATT rules

The central tenet of the international trading system under the WTO is to prevent discrimination between traded products. The core principles of non discrimination are enshrined in its core agreement on goods, the General Agreement on Tariffs and Trade (GATT). The principle of most favored nation treatment in Article 1 requires governments not to discriminate between imports of other members to the WTO. In effect, a member must treat product from any other member on the same terms. The National Treatment principle in Article III provides for non-discrimination between products produced domestically and those imported from foreign countries. It stipulates that a member not discriminate against products that are imported in favour of those that are produced domestically.

The WTO TBT Agreement

Further provisions for preventing discrimination between products through technical standards and regulations, including labeling, are set out in the WTO Agreement on Technical Barriers to Trade (TBT). The Agreement differentiates between mandatory and voluntary standards. Mandatory standards are termed "technical regulations". Voluntary standards are termed "standards".

Technical regulations must abide by certain rules set out under the Agreement. Article 2.1 restates the national treatment and non-discrimination obligations of the GATT. Article 2.2 requires that domestic measures not create "unnecessary obstacles to international trade". For this purpose, technical regulations shall not be more trade restrictive than necessary where they fulfill a "legitimate objective". Some legitimate objectives included in the agreement are "the prevention of deceptive practices and the protection of human health or safety, animal or

[17] Hoekman and Kostecki (2001) *The Political Economy of the World Trading System The WTO and Beyond*, Second edition, Oxford University Press, Great Britain, page 51.

plant life or health, or the environment". The measure also must be "least trade restrictive" in light of the applicable risks.

Obligations for voluntary ecolabeling schemes, or standards, are different to obligations for mandatory schemes. They are set out in the Code of Good Practice[vi] at Annex 3 to the Agreement. Members are to ensure their standardizing bodies accept and comply with the Code and exercise due diligence to ensure it is enforced. Central government bodies must comply with the Code. The obligations under the Code are similar to those that apply to technical regulations, requiring members not to discriminate, to accord national treatment and to ensure that their standards do not create unnecessary obstacles to international trade[vii].

The extent to which members must assume responsibility for the labeling activities of local and NGO standardizing bodies, and how accountable these are to other members is unclear. The general view appears to be that members must take all reasonable measures to ensure these standardizing bodies comply with the Code. This falls short of ensuring that ecolabeling schemes do in fact meet the Code's requirements. Some commentators suggest that the TBT agreement requires members to ensure its standards are in conformity with the Code.

GATT Article XX Exceptions

There are a number of exceptions to WTO rules in Article XX of the GATT. These provisions allow states to impose trade restrictions based on health, safety and by implication, environmental policy objectives, provided that certain conditions are met.

Provisions relevant to environmental standards are paragraphs (b) and (g) of Article XX. Paragraph (b) provides that members may take measures that are "necessary to protect human, animal or plant lie or health". Paragraph (g) states that measures "relating to the conservation of exhaustible natural resources" may be taken, provided that such measures are "made effective in conjunction with restrictions on domestic production or consumption". Both (b) and (g) (and indeed all paragraphs under Article XX) however, are subject to the requirements of the introductory paragraph to Article XX which stipulates that measures taken pursuant to them not be applied in manner that constitutes "arbitrary or unjustifiable discrimination" or a "disguised restriction on international trade." There have been several cases in the GATT and WTO where countries have sought to justify trade restrictions for environmental purposes under Article XX (g).

There are some further qualifications to the imposition of trade restrictions under the WTO. First, the WTO rules generally make a distinction between product characteristics and process characteristics. The GATT and WTO treaty text include clauses that focus on "products" and use the phrase "like products". Generally this phrase has been interpreted in such a way that "process and production methods" that cannot be detected in the final product (PPMs) are generally not examined in the "like product" determination[18]. The generally accepted practice has been that the WTO therefore prohibits discrimination on the basis of processes leading to, and not evident in the final product. The effect of this has been to disallow environmental standards where they restrict trade on this basis in order to prohibit parities from requiring exporting countries to alter their environment policies or practices in order to have equal access to the market[viii]. The generally accepted justification for this is that if the GATT allowed importing countries to force other countries to change their policies, the balance of rights and obligations among countries under the agreement would be seriously impaired.

[18] Sampson and Chambers (eds) (1999) *Trade, Environment and the Millennium*, United Nations University Press, Tokyo, page 199.

Recent cases such as the "*Shrimp Turtle"* decision may have cast some doubt on this interpretation. In this case the WTO upheld as a legitimate exception under Article XX (g), an environmental standard implemented by the US that restricted trade on the basis of production methods relating to the product, albeit with some conditions. The implications of this case for the permissibility of PPM-measures in the WTO are not clear. Although subject to some uncertainty[19], it is possible that after "*Shrimp Turtle,"* process-based environmental standards that restrict trade by requiring members to comply with certain environmental standards in their product process or production methods could be permitted as exceptions to WTO rules.

Second, the WTO also generally does not favor use of unilateral action to protect the environment outside national jurisdiction, nor permit discrimination where it has the effect of forcing the standards of one country on another. Maintaining differences in standards and conditions across countries also goes to the heart of the theory of comparative advantage[20]. It recognizes that differences among nations are very important reasons for trade. To allow the WTO the rules to permit importing governments to impose their own standards on other countries would substantially alter the conditions existing in the exporting country from which it derives its comparative advantage and subsequent benefits from trade[21]. Should countries be able impose their own environmental standards on other parts of the world arguably they could also impose their own social and labor standards, which may not be appropriate for other countries.

Ecolabels and trade restrictions under the WTO

Potential conflicts between the WTO rules and government sponsored ecolabeling schemes can arise where such schemes restrict trade in goods. The legality of ecolabeling schemes under WTO rules will ultimately depend on the type of labeling scheme, the procedure it employs and the form of regulatory policy it utilizes (whether it is mandatory or voluntary).

The current interpretation[22], according to GATT practice, is that voluntary ecolabeling schemes are permitted under WTO rules whilst mandatory schemes pose most problems in international trade. It seems that voluntary measures or ecolabeling schemes are unlikely to be considered discriminatory, and thus inconsistent with WTO rules, where their effects can be seen as reflecting market conditions, and market responses to producers[ix].

Mandatory ecolabeling schemes would not be permitted under WTO rules where they contravene the GATT or TBT provisions, either by constituting discrimination or causing unnecessary obstacles to international trade. Discrimination could occur where one country is required to display an ecolabel on its product as a condition of import into the market of another, (and this is not required for other countries), or could occur where eco- labeling schemes discriminate against foreign producers *vis-a-vis* producers in the domestic market, such as where the labeling scheme applies unevenly to domestic and foreign producers.

Ecolabeling schemes may constitute unnecessary obstacles where the scheme is employed to afford protection to domestic production. For example, where it selects product categories for

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[19] Brown Weiss and Jackson (eds) (2001) *Reconciling Environment and Trade*, Transnational Publishers, New York, page 32.

[20] Jackson, John (2000), *The World Trading System Law and Policy of International Economic Relations*, Second edition, MIT Press, Cambridge UK.

[21] *Ibid.*

[22] There have been no cases of environmental standards brought under the TBT Agreement. The relationship of its provisions to environmental standards therefore remains untested.

award of the label that are almost entirely imported or where the decision of award rests entirely with the authorities in the importing country[x].

Conflicts could be avoided where schemes meet the requirements for one of the exceptions to the GATT, or Article 2.2 of the TBT Agreement where the measure is considered necessary to achieve a legitimate objective, such as protection of the environment.

Ecolabeling schemes which require compliance with "life cycle analysis" based on PPMs are likely to be in conflict with WTO rules. This could also arise where ecolabeling regimes are mandatory and require producers to change their production methods in order to display an ecolabel (comply with the requirements of life cycle analysis) which is required as a condition of import.

Although it is recognized that standards and regulations, such as ecolabeling schemes, can also impose a myriad of compliance costs on cross border business, WTO rules do not seek to regulate purely commercial conditions in international markets that do not involve discrimination.

Bilateral and regional trade agreements – rules and principles pertaining to ecolabels

Most countries do not include specific provisions to regulate ecolabels in bilateral and regional trade agreements with other countries.

There has however, been a recent inclination by both the US and the EU to require adherence to certain environmental standards as a condition for market access in bilateral agreements with some countries.

For example, the recently concluded US's bilateral free trade agreements with Chile and with Singapore contain obligations which require each party to "effectively enforce" its own environmental laws, the penalty for non compliance being monetary penalties in the first instance, or trade sanctions where this cannot be paid.

The Cotonou Agreement between the EU and ACP states (African, Caribbean and Pacific Island States), grants preferential trade access to EU markets, conditional upon upholding the requirements of the agreement. These include committing to the development of international trade in a way that ensures sustainable management of the environment and which is consistent with international conventions in the area. Further provisions focus on supporting specific measures and schemes, and regional and international commitments concerning mineral and natural resources such as tropical forests.

More detail on the environmental and standards provisions of bilateral and regional free trade agreements is attached at Annex 2.

II. Ecolabels and international trade – the international political dimension

The international debate over the intersection of trade and environment creates the setting for use of ecolabels. It is shaped by activities in several institutions. The WTO administers global trade rules. The UN develops principles applicable to both the environment and trade and supports international environment treaties. The ISO and the ITTO set and manage international standards. Non-governmental organizations also seek to shape the international political debate on ecolabels.

The WTO

The WTO and the environment

Ecolabels and environmental standards form part of a broader debate in the WTO over the relationship between trade and the environment. The debate is focused on the extent to which the WTO should permit environmental measures that restrict trade. It is a controversial issue over which members are deeply divided. It is characterized by calls from a few countries, lead by the EU, to change WTO rules to accommodate environmental measures against opposition from the majority.

The WTO, environmental standards and environmental labeling

Ecolabels and certification in forestry products per se has not been a subject of much discussion in the WTO, although more recently it has begun to emerge as an issue related to concerns about illegal logging practices. The debate in the WTO has instead centered on environmental labeling in general.

Labeling for environmental purposes has been discussed by WTO members mostly in the Committee on Trade and Environment (CTE) and the Committee on Technical Barriers to Trade[xi]. It has been an element of CTE work since the 1996 Singapore Ministerial Conference[xii] and now forms part of the current round of trade negotiations, the Doha Development Round[xiii].

WTO members have recognized that well-designed programs for ecolabeling can be effective policy instruments but they have also raised concerns about the possible adverse trade effects of such schemes. Views of the WTO membership on the relationship between ecolabels and trade are divergent. Work in the CTE has been characterized by a lack of consensus.

The debate has been marked by marked by two issues; the extent to which the WTO permits trade to be restricted by standards for process and production methods (PPMs); and mistrust by developing countries that environmental requirements will be used as trade barriers against their exports into the markets of developed economies. Members have so far been unable to reach any consensus as to whether WTO rules should be changed or clarified under Doha mandate.

Positions of industrialized countries

The European Union (EU) and Switzerland have been pressing for changes to WTO rules to provide for wider scope to impose environmental standards that restrict trade, including allowing for standards for processes or production methods (PPMs)[xiv]. The push has eased somewhat since the failure of the Cancun talks in September 2003, however still remains part of the EU's formal position[xv]. Both the EU and Switzerland have advocated ecolabeling as effective market-based instruments for achieving environmental outcomes, which can enhance market access for environmentally friendly products for developing countries. This

has been combined with an endorsement of voluntary ecolabeling schemes based on a life cycle approach as legitimate with the rights and obligations of the WTO agreement[xvi].

Other industrialized countries generally do not advocate changes to WTO rules to permit environmental standards that restrict trade. They acknowledge both the usefulness of ecolabels when they are voluntary, but also recognize that there may be potential trade effects. Some oppose the use of PPM measures in the WTO as a basis for trade restrictions; others have noted that the issue should be explored further[xvii].

Japan is the only country in the WTO to formally table a position relating specifically to forestry products, trade and the environment. In its submission to the CTE[23], Japan raised several issues in support of sustainable forest management, related to trade and to labeling. The submission noted that labeling for environmental purposes should be further examined and that consideration be given to concerns that labeling not create unnecessary obstacles to international trade. Although not directly related to ecolabeling schemes, the submission also refers to the practice of illegal logging and proposes that possible international approaches from a trade perspective be examined when exploring solutions to the issue.[24]

Positions of the developing countries

Although many developing countries have implemented ecolabeling schemes, their official positions in the CTE on labeling are characterized by:

- concerns about the potential adverse trade effects on market access of ecolabeling schemes;
- a deep mistrust of the use of life cycle analysis in terms of its effects on trade, and opposition to the use of criteria related to processes or production methods not present in the final product (PPMs) in the identification of environmental goods;
- skepticism about changes to WTO rules to accommodate ecolabeling schemes, for fears that developed countries will use environmental labeling schemes to levy trade barriers against them;
- a preference for market driven, voluntary schemes.

Some Asian and Latin American countries such as Malaysia[25], Thailand[26], China[27], Indonesia[28], Korea[29] and India[30] recognise that while ecolabels can be effective policy instruments, they have possible adverse effects on trade. Most remain unconvinced of the need for any new disciplines in the WTO on labelling or ecolabeling[31]. They assert that the

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[23] WT/CTE/W/211.

[24] A further submission on bilateral cooperation between Japan and Indonesia in combating illegal logging was tabled by Japan in October 2003. This issue will be further discussed at a later stage. See WT/CTE/W/233.

[25] PRESS/TE/039

[26] PRESS/TE/035

[27] WT/CTE/M31

[28] *Ibid*.

[29] *Ibid*.

[30] WT/CTE/W/207

[31] Malaysia WT/CTE/M31, Indonesia WT/CTE/M31, Mexico WT/CTE/M/27

TBT and SPS Agreements contain adequate provisions for dealing with ecolabeling schemes[32]. Countries such as Korea and Singapore have expressed concern about the reliance of ecolabeling schemes on life cycle analysis. Some oppose the use of the process and production method criterion in the identification of environmental goods[33].

Many developing countries support ecolabeling schemes (and environmental requirements) and consumer information that is market driven and voluntary[34], based on criteria of "sound science" and transparency[35] and consistent with the non-discriminatory nature of the multilateral trading system, as the preferred means for effective compliance with environmental policies and regulations.

In addition, several developed countries have noted that ecolabeling standards and environmental standards generally should differ across countries to take into account differing economic conditions and levels of development[36]. Some refer to the concept of equivalency (whereby different standards that achieve the same outcome or result are recognised as equivalent) as an effective way of dealing with differing standards across markets[37].

The United Nations

There is recognition of the role of environmental standards, ecolabels and international trade within the United Nations (UN). UN members have made political commitments that support the use of labeling as a consumer information tool provided that it does not cause discrimination in trade or create undue trade barriers.

The significance of ecolabeling was recognized under Agenda 21[38]. The Rio Declaration also suggests promoting public awareness and increased participation in environmental issues through dissemination of information[39].

More recently at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002, UN members debated and recognized the importance of consumer information related to sustainable consumption. The Summit concluded in paragraph 14(e) of the Implementation Plan that countries should take action to "develop and adopt, where appropriate, on a voluntary basis, effective, transparent, verifiable non-misleading and non discriminatory consumer information tools to provide information relating to sustainable production and

[32] Malaysia, Indonesia WT/CTE/M31

[33] Korea WT/CTE/M31 Singapore TN/TE/R/3

[34] Malaysia WT/CTE/M31, Indonesia WT/CTE/M31

[35] Indonesia WT/CTE/M/31, India WT/CTE/W/207

[36] China WT/CTE/M31, Indonesia WT/CTE/M/27, India WT/CTE/W/207.

[37] Korea PRESS/TE/035 Indonesia WT/CTE//W/207.

[38] " governments, in cooperation with industry and other relevant groups, should encourage expansion of environmental labeling other environmentally related product information programs designed to assist consumers to make informed choices."

[39] Okubo, Atsuko (1999) *Environmental Labelling Programs and the GATT/WTO Regime*, Georgetown International Environmental Law Review 205, page 206.

consumption, including human health and safety aspects. These tools should not be used as disguised trade barriers"[40].

UN members also further committed to protecting and managing the natural resource base of economic and social development. This included committing to action at all levels to sustainable forest management of both natural and planted forests and for timber and on timber products[xviii].

Political commitments are supported at the UN level by various research and capacity-building activities on ecolabels and international trade carried out under the auspices of UNEP[xix], UNCTAD[xx] and ESCAP. Issues and capacity building activities relating to standards and certification requirements in the forestry sector have tended to be dealt with in the FAO[xxi]. They are also supported by the UN Forum on Forests. The OECD has also undertaken some research on the ecolabeling programs concentrated in developed countries[xxii].

Other international fora

The International Organisation for Standardization (ISO)

The ISO is a network of the national standards institutes of 148 countries. It is a non-governmental organization: its members are not delegations of national governments.

The ISO comprises technical committees made up of member bodies which develop international standards that establish guiding principles for the development and use of environmental labels and declarations. The standards themselves and participation in their development is voluntary and does not change or override any legal requirements.

In the early 1990s, the ISO developed a series of quality standards for environmental management (the ISO 14000 series) and by 2000 had developed definitions for different types of eco-labelling schemes and principles and procedures to set down key elements for certain types of ecolabelling schemes. The ISO has also established standards to verify the procedures for award of the label[41] and has examined life cycle assessment in ecolabeling schemes[42].

The International Tropical Timber Organization

The International Tropical Timber Organisation (ITTO) is a commodity organisation which brings together countries which produce and consume tropical timber to discuss and exchange information and develop policies on all aspects of the world tropical timber economy[43]. The ITTO was first established by the International Tropical Timber Agreement (ITTA) under the auspices of UNCTAD in 1985.

The ITTO provides a framework to facilitate discussion, consultation and international cooperation on issues relating to international trade and the utilization of tropical timber and the sustainable management of its resource base. It develops guidelines for the practice of sustainable forest management which are supplemented by a set of criteria and indicators

[40] WSSD, Report of the WSSD, September 2002. See Report of the WSSD Plan of Implementation, Part IV, Articles 43 (a)-(i).

[41] See ISO standards 14024 and 14025.

[42] See work by Sub Committee ISO/TC 207/SC Life cycle assessment on the ISO 14040 series.

[43] See www.itto.or.jp accessed 10/02/2004

against which the standards of management and progress towards sustainability can be assessed. The ITTO does not seek to regulate trade in tropical timber nor impose binding obligations on its members.

Non-governmental organizations (NGOs)

Governmental efforts at both the national and international level have been supplemented by support for and development of voluntary ecolabeling schemes by a wide range of environmental non governmental organizations (NGOs). International, (principally western) environmental NGOs have generally been active in the trade and environment debate of which environmental standards form part, including the debate over PPMs, standards and barriers to trade under WTO rules.

Development of voluntary ecolabeling and certification schemes by NGOs[xxiii] has been combined with campaigns and activities on environmental standards, trade and the environment generally.

Generally, the formal position of NGOs is that standards and ecolabels are tools to enhance environmental protection and to promote environmental responsibility within industry. By and large they support the following:

- The adoption of voluntary schemes, although some suggest that voluntary programs can only be successful where they are integrated into the activities of governments[44];
- The use of labeling based on life cycle analysis[45];
- Incorporation of (non product related) PPMs into ecolabeling criteria, specifically as a means of protecting global and shared resources[46];
- The use of the precautionary principle in application of standards[47].

In the forestry sector, many NGOs endorse the system established by the Forest Stewardship Council (FSC)[48] and support the activities of other independent certification and ecolabeling agencies. In relation to trade, environment and standards most NGOs support the use of trade coercion to enforce environmental standards and environmental measures and advocate changes to the WTO to permit this[49]. Many support addressing labeling issues through MEAS and other international conventions[50].

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[44] See Tom Rotherham, Selling Sustainable Development: environmental labeling and certification programs, October 1999, introduction.

[45] *Ibid* p 23.

[46] See FERN, Eco labeling, forest certification and the WTO, July 2003, page 14 See Friends of the Earth, "Process and Production Methods (PPMs) and Eco labeling, www.foe.org accessed 13/01/2004

[47] See http://www.isd.org, accessed 12/01/2004

[48] Friends of the Earth. See http://www.foe.org, accessed 13/01./2004. Greenpeace is also a member of the FSC. See http://www.greenpeace.org Also see the Centre for International Environmental Law (CIEL) at www.ciel.org

[49] See WWF press release "Ecolabeling", WWF Briefing Series for the 5th Ministerial Conference, Cancun.

[50] See Tom Rotherham, Selling Sustainable Development: environmental labeling and certification programs, October 1999, p24.

NGO ecolabeling and certification schemes are not discussed here as they were covered extensively in a previous report *Global use of Ecolabels and Use of Ecolabels and Certification in Forestry.*

E. The impact of ecolabeling schemes on trade in forestry products for ASEAN member countries

I. The impact of ecolabels on trade

Whilst ecolabels may be market-based instruments with legitimate environmental objectives, there are concerns that they could become potential barriers to trade. These concerns are harboured generally by developing countries that also fear the burden of the potential costs of ecolabeling schemes will fall disproportionately on them. This can be partially attributed to the fact that developing countries tend to be standard-takers rather than standard setters - ecolabels tend to be set in developed world that are export markets for the developing world rather than vice versa[51]. Moreover, standards are often set by developed countries for products in which developing countries are the exclusive or predominant producers, including some forestry products[52].

Developing country fears have been heightened by the growth of environmental standards, particularly in developed country markets, over the past decade or so, which have emerged as potential barriers or impediments to trade. A recent study conducted by the Australian APEC Study Centre of Monash University[53] revealed that over fifty new trade barriers have been imposed over the last decade as a result of environmental standards. A further thirty environmental regulations that could prospectively impact on international trade have also been adopted. Most of these measures originate from the European Union, the rest are from Japan and the United States and Multilateral Environment Agreements. The study also found that there are new proposals in the pipeline to extend regulation for environmental purposes which are likely to affect sectors of export interest to developing economies, including those in ASEAN.

Several of these barriers related to labeling and packaging requirements imposed by governments for environmental reasons on products of export interest to developing countries. These included forestry products such as wood panels and chipboard and wood packing material. The measures often affected trade by requiring importers to adopt the domestic environmental measure as a condition of access to the market, or the banning access of products to the market.

A 2003 report by the US National Foreign Trade Council[54] also refers to recent policy action by the EU to legitimize a nation's right to enact regulations and standards that discriminate among otherwise 'like' products on the basis of 'social- and eco-friendly' process and

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[51] Zarilli, Jha and Vossenaar (eds) (1997) *Eco-Labelling and International Trade*, United Nations, Paris.

[52] UNCTAD TD/B/COM.1/53 Trade and Development Board, *Report of the Expert Meeting on Environmental Requirements and International Trade, 2-4 October 2002*, p 9

[53] The Australian APEC Study Centre, Monash University, *European Unilateralism: Environmental Trade Barriers and the Rising Threat to Prosperity through Trade*, July 2003. The research was conducted by the Centre for a symposium in May 2003 of APEC Senior Officials on trade and environment issues.

[54] See the report: *EU Regulation, Standardization and the Precautionary Principle: The Art of Crafting a Three-Dimensional Trade Strategy that Ignores Sound Science*. The study is based, in part, on a prior NFTC study entitled, "Looking Behind the Curtain: The Growth of Trade Barriers that Ignore Sound Science", accessible at www.nftc.org.

production methods, which could lead to the erecting of trade barriers. Against these emerging trends it is evident that ecolabels have already caused and have the potential to cause further restrictions on trade[xxiv].

II. The impact of ecolabels on ASEAN timber trade

The impact of ecolabels on timber trade of ASEAN economies will depend on the emerging policies trends in key export markets and the significance of the trade affected in these markets.

In the past decade there have been instances of mandatory ecolabels that discriminate against ASEAN timber trade. In recent years there has also been growth of voluntary labeling schemes which illustrate a clear trend towards the increasing use of life cycle analysis and the assessment of process and production methods in eco-label criteria. There has also been a marked trend in developed countries, particularly the EU and Japan, to address environmental issues such as sustainable management of forests and legal harvesting of timber through labeling and certification schemes. This trend has extended to public procurement policies in some countries[55] and has been supported and pushed by various NGOs.

These restrictions and emerging trends matter. ASEAN trade in timber is substantial, amounting to $US 24 billion in 2000. Exports are concentrated in Japan, the US and Europe, accounting for $US 3.96 billion, $US 2.62 billion and $US 2.45 billion in value terms respectively and 20 percent, 13.7 percent and 12.8 percent of exports respectively.

Given the significance of trade affected it is likely ecolabels and certification schemes are already impacting on ASEAN timber trade. In the forestry sector there is research to suggest that certification schemes introduced principally in Western European countries have had limiting effects on the direction and extent of international trade in forest products and have the potential to affect competitiveness, particularly for more distant suppliers.[56]. Tropical suppliers of forest products have tended to be subject to greater and more stringent standards than non tropical suppliers of wood products due to heightened concern over tropical forests. The impact on trade however, is not quantifiable at present.

In light of the emerging trends, restrictions are likely to increase.

Mandatory ecolabeling and certification schemes

Until recently, there were only a few instances where mandatory ecolabeling and certification schemes impacted on trade. The first was an Austrian proposal. In 1992 its parliament enacted legislation that required all tropical timber to be labeled. Mandatory labeling applied to all tropical timber products placed on the market. It covered "production, processing, storage, packing, marking, offering for sale, selling, transporting, advertising, importing and exporting of timber and timber products". All products were required to display the label "made of tropical timber" or "containing tropical timber". The law also called for a voluntary ecolabel

[55] *Joint UNECE/FAO Roundtable on Trade, Environment and Forests – Working Together for Sustainable Development*, "Forest and Forest Product Certification and its impact on trade and trade policies" Suboh Mohd Yassin, Deputy Secretary General, Ministry of Primary Industries Malaysia, 9 July 2003.

[56] Examples of these standards include restrictions on wood panels which use formaldehyde glue; restrictions on certain timber preservation processes and materials and controls on processing methods and packaging regulations. Bourke and Leitch, *Trade Restrictions and their Impact on International Trade in Forest Products*, FAO, 2000, p 15

to identify the quality of the wood in terms of sustainable management. A 70 percent tariff increase was simultaneously imposed on the importation of tropical timber. Tariff proceeds were to be used for projects promoting sustainable forest management of tropical timber.

The legislation was strongly denounced by tropical timber producing countries, particularly from ASEAN, as inconsistent with the GATT as it applied only to tropical and not temperate timber. In the face of possible retaliatory action, Austria repealed the import duty and the mandatory labeling scheme. Instead it replaced both with the voluntary ecolabeling program which was expanded to include all timber, and not exclusively tropical timber.

In the early 1990s the Dutch government also proposed a regulation relating to trade in forestry products, purportedly aimed at protecting tropical rainforests.

The regulation was proposed pursuant to the Netherlands Framework Agreement on Tropical Timber in June 1993[57].

Under the Agreement, the Dutch government and other contracting parties sought to ensure that from 1996, the trading and processing of tropical timber in the Netherlands would be limited to timber supplies from countries or regions with a forestry policy and management system geared to protection and sustainable production. The agreement included a plan of action which proposed that tropical timber could only be imported into the Netherlands after ascertaining that it came from a sustainably-managed forest, that the origin of the tropical timber had been established and that a certificate had been awarded.

In response to complaints from ASEAN countries, the government did not enact the measure. It is still officially "reviewing" the measure. In the meantime it exists largely as a voluntary scheme.

More recently, the European Commission will soon make mandatory the European standard for applying the "CE" marking to construction products. The CE marking is used by manufacturers as a declaration that products it is affixed to have been manufactured in conformity with all applicable Community provisions and that appropriate conformity assessment procedures have been completed[58]. Products marked with the CE label are deemed to have conformed to all necessary health, environment and safety requirements and can be sold in all EU member states.

The European standard defines wood-based panels for use in construction and specifies the relevant characteristics and the appropriate test methods for the evaluation of conformity and the requirements for marking these products with the "CE" mark[xxv]. The Directive for the standard sets out environmental, health and hygiene requirements that products must meet. It does not consider phases in the life cycle of the product other than the use phase, although there may be scope for the consideration of process and production methods at the national level, provided these are not inconsistent with the Directive.[xxvi]

As of 1 April 2004 it will be compulsory for exporters to apply the 'CE Marking' on construction products for them to be legally sold in the EU[59]. Until this point, application of

[57] The agreement stated that "a properly functioning market oriented system to distinguish sustainable for non sustainable produced timber can be an effective incentive to promote sustainable forest management since the costs of sustainable production can be passed to the consumer. Ibid page 397-398.

[58] For construction products the relevant EU Directive setting out the essential requirements is Council Directive 89/106/EEC.

[59] based on European Union (EU) Standard EN 13986.

the mark was voluntary. Several tropical plywood producers have voiced concern about the impact of the new requirements on timber trade. Malaysia and Brazil have noted that these new regulations will severely affect the tropical timber trade. They claim that to comply with the standard manufacturers will need to install quality-control systems in their factories for the regular testing of products and use a certified testing laboratory with third-party auditing. They assert that this will impose impediments to trade since many tropical timber producers do not have the necessary certified testing laboratories[60].

Although this measure may create impediments to trade in timber products for some developing countries, the compulsory EU requirements do not appear to cause disallowable trade barriers under the WTO. There could be an issue at the national level if conditions for certifying compliance with the essential requirements discriminate between products on the basis of environmental criteria which utilize process and production methods or life cycle analysis.

Voluntary ecolabeling and certification schemes

Voluntary measures do not normally contravene WTO rules. However, ecolabels endorsed or developed by governments, even if voluntary, may contravene WTO rules which disallow measures which confer a favour or advantage over like products from one country but not another or which allow more favourable treatment for a domestic product than an imported like product. Generally, a product carrying an endorsement from a government authority has an advantage in the market over a product which does not. To illustrate, under WTO rules, legal or illegal logs are like products, as is timber which is from forests which are sustainably-managed and timber which is from forests not sustainably-managed.

The voluntary EU eco-label for "textiles, pulp and paper" may cause discrimination in trade[61]. Brazilian exporters have perceived the application of the voluntary EU ecolabel as a threat to the maintenance of the position previously won by their products in the EU market. This has been described as mainly due to the application of life cycle analysis as part of the ecolabel. Brazilian exporters claim that it discriminates between imported and domestic products based on the environmental assessment of various uses of inputs and process and production methods. (For example, the way in which water generation is calculated is mainly done according to European methods which pay no attention to the fact that positive environmental water management is reached in different ways in Brazil).

The European Commission is also currently in the process of developing a voluntary eco-label for furniture which could discriminate against wood. A draft Commission Decision[62] for establishing criteria for the award of a community eco-label to furniture requires that furniture[63] comply with certain ecological criteria.

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[60] "Tropical timber producers fret about new regulations", ITTO, see http://www.itto.or.jp/inside/current_news/may15_2003_regul.html accessed 17/02/04.

[61] Zarilli, Jha and Vossenaar (eds) (1997) *Eco-Labelling and International Trade*, United Nations, Paris, pages 9, 282.

[62] Commission Decision establishing ecological criteria for the award of the Community eco-label to furniture, Draft 10 December 2003, available at http://europa.eu.int/comm/environment/ecolabel/pdf/furniture/draftcriteria_101203.pdf

[63] Article 2 specifies that the product group is limited to domestic furniture used indoors and contract furniture, limited to all furniture used indoors for business purposes. Outdoor furniture is excluded. Ibid.

The criteria require that materials, including solid wood and wood based materials comply with "material specific requirements". For solid wood these include that all virgin wood from forests must originate from sustainably-managed forests, and at least 50 percent of this virgin solid wood originate from sustainably-managed forests which are independently certified and meet specific criteria. Wood that is not certified as being from sustainably-managed forests must not originate from illegal harvesting, genetically modified trees or uncertified high conservation value forests. The treatment of wood with certain substances is also prohibited. For wood based materials similar criteria apply although the percentage of wood required to be certified is lower.

The draft criteria are expected to be finalized soon. Further detail on the proposed criteria applicable for the eco-label is set out at Annex 3.

Exporters in New Zealand have expressed concern about the ecolabel criteria. They claim that given the small percentage of global forest that is certified and the lack of mutual recognition between independent schemes, in effect the ecolabel means that only a small proportion of timber will be considered by the EU scheme to be acceptably certified[64].

Public procurement policies

Some governments in key ASEAN export markets have in place procurement policies which may impact upon ASEAN trade in timber products. Whether this is the case and the extent of the trade impact however, cannot be measured accurately without fuller analysis of the level and importance of trade affected in the markets concerned.

Only the UK and Denmark have national procurement policies that guide purchases of timber products. Since 2000, the UK has had in place a mandatory public procurement policy which is binding on all government departments and agencies. Government bodies are required to purchase sustainably-produced timber by specifying in orders and in contracts that suppliers provide documentary evidence that timber has come from sustainably-managed sources. The Danish government has voluntary guidelines to assist government agencies and departments purchase tropical timber that is produced in a legal and sustainable manner. Germany and the Netherlands are reportedly in the process of developing policies on timber,[65] as is Switzerland[xxvii].

The EU has procurement policies which bind all member states and their respective procurement policies. The current directives provide some scope for specifying environmental requirements and criteria based on life cycle analysis, however, require that timber be "legally produced" or "sustainably produced" would be likely be difficult as the directives stand.

In 2003 the EU adopted a common position on two new directives on public procurement[66] which could widen the ability of public bodies to take account of environmental requirements in their procurement of timber products. Member states are due to bring their domestic legislation into conformity with the new directives by 2005. The new directives could widen the ability of public bodies to take account of environmental requirements in their

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[64] see www.nzforestry.co.nz, accessed 16/02/04.

[65] "National Policies undermine new "green" timber buying rules" at www.fern.org accessed 16/02/04.

[66] Directive of the European Parliament and of the Council for the coordination of procedures for the award of public supply contracts, public services contracts and public works contracts COM (2000) 275 final/2 30 August 2000 and Directive of the European Parliament and of the Council Coordinating the Procurement Procedures of Entities operating in the Water, Energy and Transport sectors Com (2000) 276 final/2 31 August 2000.

procurement of timber products and potentially, whether timber has been sustainably-produced or legally harvested.

Other major export markets such as the US, Japan and China do not have procurement policies that mandate environmental requirements for timber products.

Many governments, including the EU and its members, the US and Japan are also signatories to the WTO Agreement on Government Procurement (GPA) and are bound by its rules. The GPA appears to limit but not prohibit the use of technical specifications based on criteria that timber be sustainable or legal or environmentally certified. The scope for use of PPM based criteria may however be limited by general WTO rules of interpretation on the use of PPMs and non-discrimination (See Section D.I).

More detail on country procurement policies and the provisions of the WTO GPA is set out at Annex 4.

Other trends in policy among importing countries and major traders

There are a number of initiatives in the pipeline involving ecolabeling and certification schemes which have possible trade impacts for ASEAN. There has been a recent trend among major timber importing countries, particularly the EU, to seek to combat illegal logging and harvesting practices which involve systems for verification of sustainable forest management and reflect an inclination to use trade sanctions to secure compliance[67].

The EU FLEGT Strategy

The European Commission adopted the Forest Law Enforcement, Governance and Trade (FLEGT) proposal in May 2003[xxviii]. There are several elements to the initiative. The declared overall goal is to develop a multilateral approach to prevent illegal logging. The EU has initiated discussions with Japan and the US for this purpose, recognizing that a successful international initiative must be supported by all major importers of timber.

Until this is developed, bilateral and regional agreements with the EU to control illegal logging are proposed. These agreements would require exporting countries to establish export permits, issued only on condition that timber had been harvested in conformity with national legislation. Export permits would be required in order for imports to be permitted. The EU would issue a regulation to create the framework for controlling trade in timber in this way. It is intended that the permits initially would be required only for round wood and sawn timber, but the aim would be to extend the same control to trade in processed wood products. FLEGT also envisages connections between the system for verifying that timber is legal and systems for verifying that forest management is sustainable[xxix]which include chain of custody arrangements which track and identify timber from the point of harvest or point of export.

The EU Commission Communication on FLEGT to the European Council and Parliament describes the system as "*voluntary*" licensing of exports. This assertion is difficult to support given that export permits must be issued verifying that the timber is not illegal, and imports will be held up (banned) until evidence of the export permit is provided. If a partner country decides to enter an agreement with the EU, it is this decision that would presumably be voluntary. The FLEGT partnership agreements would be regulated and therefore mandatory controls on trade. Where the partnership arrangements set terms which will have to be

[67] Discussions with representatives of the US timber industry suggest the US industry is opposed to the use of trade sanctions to stop illegal logging, or the negotiation of a multilateral instrument for that purpose.

satisfied the EU would effectively be requiring importers to meet its preferred standards as a condition for trade. The requirement that legal timber could be imported but illegal timber could not be imported would likely breach fundamental provisions of the WTO that controls on products should be non-discriminatory.

The FLEGT document is silent on the consistency of its proposals with WTO rules. If challenged, the EU may argue that banning imports of timber which are illegally logged is necessary to protect the environment and that provisions of the WTO which warrant imposition of technical standards to protect the environment justify these measures. The case would likely be weak.

Japanese proposals

Japan has also committed to tackling the issue of illegal logging in international fora, based on the idea that illegally harvested timber should not be used[68]. Like the EU, it has sought to build international consensus on the issue, and has also moved towards specific initiatives aimed at combating illegal logging which envisage trade measures against illegally harvested timber (and Japan notes, which are consistent with WTO rules[69]).

In June 2003 Japan entered into a bilateral "Action plan" with Indonesia on "Cooperation in Combating Illegal Logging". The Action Plan, according to Japan's submission, incorporates a mechanism to verify and track legally harvested timber, and distinguish it from illegally harvested timber from the stages of harvesting, processing and distribution to the exporting stage. The Action Plan also favours studies on possible trade measures which can be used against illegally harvested and processed timber.

Japan has stated that it considers both trade measures against illegally harvested timber, and a mechanism noted above, to be "indispensable" to ensuring that measures against illegal logging under the Action Plan are effective.

It is not clear from Japan's submission whether the elements of the Action Plan are mandatory or whether they are voluntary or what they entail precisely. Mandatory trade measures which discriminate against timber based on the processing or production methods of the product or distinguish between timber according to whether it has been produced legally or not are likely to contravene WTO rules.

Voluntary or not, it is clear Japanese officials are considering use of trade measures as a means to combat illegal logging practices. Although Japan has evinced an intention for these to be consistent with WTO rules, it is difficult to envisage a mandatory mechanism of the kind noted above which would not pose problems under WTO rules.

NGO pressures

International action to combat illegal logging practices and to use controls on trade through certification systems has been strongly pushed by environmental NGOs[70]. Broadly they support the initiatives of the EU and Japan. They have called for governments to:

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[68] Communication from Japan, Bilateral Cooperation between Japan and Indonesia in combating illegal logging, WT/CTE/W/233, 22 October 2003.

[69] Ibid.

[70] See "Illegal Logging and the global trade in illegally sourced timber; a crime against forests and peoples" April 2002, joint statement by Fern, Friends of the Earth, Rainforest Foundation UK , World Wide Fund for Nature and others, available at http://www.fern.org . See also FERN, Friends of the Earth and Greenpeace, Press Release 24 July 2003, RE: the EU Action Plan for Forest Law

- Enact domestic legislation which makes the sale or importation of illegally sourced timber an offence[xxx];
- Establish systems to identify legal from illegal timber by tracing the production and movement of timber products such as through certification schemes which have a chain of custody control from the forest through to the point at which the product is labeled and which have certification standards specifying legal compliance;[71]
- Use multilateral conventions to control trade in illegal timber through measures that ban imports of illegally harvested or processed timber. Bilateral and regional measures which implement this can be a starting point;
- Ensure government procurement policies prevent the purchase of illegally procured timber by requiring that exporting countries demonstrate that their timber has been sourced legally, or by giving preference to legally sourced timber in procurement criteria.

Trade measures which seek to ban imports on the grounds that a law in the exporting country has not been complied with would likely contravene WTO rules which prevent members from applying trade measures extraterritorially. Measures that prohibit trade or discriminate on the basis of the process and production methods leading to a product are problematic under WTO rules.

Enforcement, Governance and Trade (FLEGT) available at http://www.fern.org/pubs/ngostats/FLEGT.htm accessed 17/09/2003.

[71] Royal Institute of International Affairs and FERN, Controlling Imports of Illegal Timber Options for Europe, December 2002, page 28.

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Directive of the European Parliament and of the Council for the coordination of procedures for the award of public supply contracts, public services contracts and public works contracts COM (2000) 275 final/2 30 August 2000 and Directive of the European Parliament and of the Council Coordinating the Procurement Procedures of Entities operating in the Water, Energy and Transport sectors COM (2000) 276 final/2 31 August 2000

European Commission COM (2001) 274 Final Commission Interpretative Communication on the Community Law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement

European Commission "Starting points for harmonization: the CPD and its harmonized standards"

EU Institutions Press Release 3 December 2003, IP/03/1649 Public Procurement: Commission welcomes conciliation agreement on simplified and modernized legislation

Meeting on Sustainable Trade Action Plan, Wednesday 2 July 2003, Centre Borschette, Agenda.

European Union, Council Directive 89/106/EEC

European Union, Press Release DN: IP/03/1600 dated 26/11/2003 "EU – WTO: European Commission proposes to put Doha Round of trade talks back on track"

"Illegal Logging and the global trade in illegally sourced timber; a crime against forests and peoples" April 2002, joint statement by Fern, Friends of the Earth, Rainforest Foundation UK , World Wide Fund for Nature and others

Japan Basic Policy on Promoting Green Purchasing (Provisional Translation), February 2003, Law No. 100, 2000

Royal Institute of International Affairs and FERN, Controlling Imports of Illegal Timber Options for Europe, December 2002

US Federal Acquisitions Regulations Sub part 23.2 – Energy and Water Efficiency and Renewable Energy

WWF press release "Ecolabeling", WWF Briefing Series for the 5th Ministerial Conference, Cancun.

Annex 1 – Global and ASEAN trade patterns in timber products

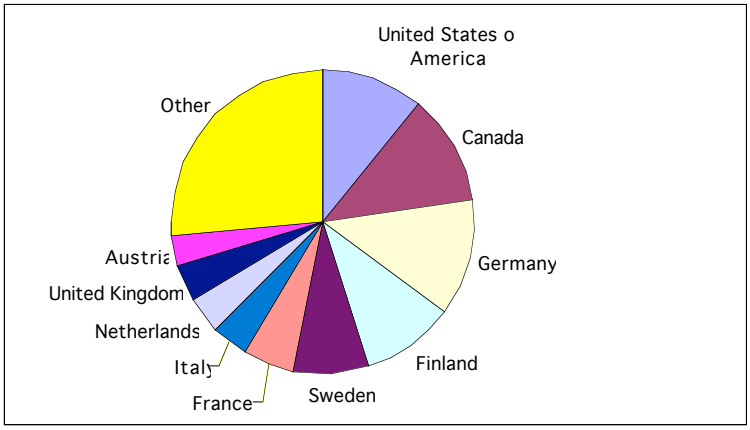
I. Global trade in timber products by country and by product

a) Exports by country and by product

Paper and paper board

The main exporters of paper and paper board in 2000 were the ($US 1.3 billion), Canada ($US 12 billion) Germany ($US 11 billion) Finland ($US 9 billion) and Sweden ($US 7 billion). In 1995 the pattern was similar, however, Germany headed the list followed by Canada, the US and Finland. See Figure A.1 below.

Figure A.1 Share of exports of paper and paperboard, 2000



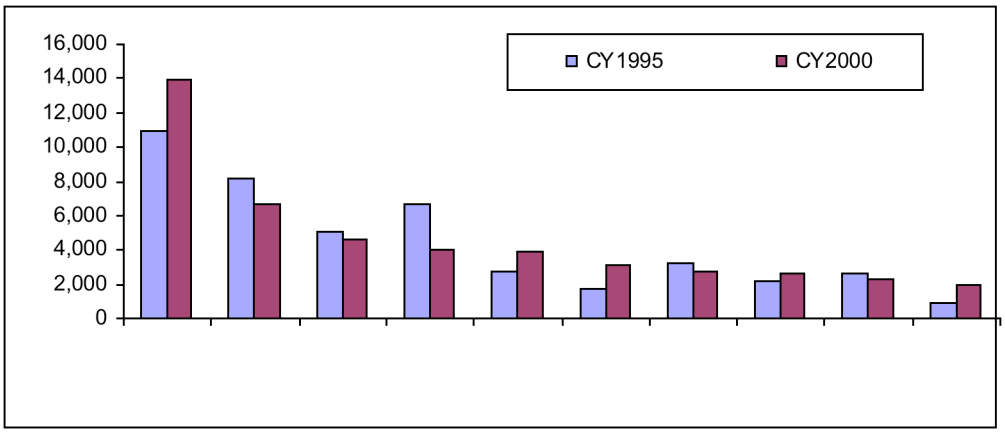
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Statistics of exports by mass indicated the EU as the dominant exporter (60 million metric tons), followed by Canada and the US with each about 15 million metric tons of exports. The pattern was similar in 1995.

Wood and articles of wood

In 2000 Canada ($US 1.4 billion) the US ($US 7 billion), Indonesia ($US 5 billion) Malaysia ($US 4 billion), and Germany ($US 4 billion) were the largest exporters of wood and wood articles. The pattern was similar in 1995, with exports through to 2000 falling for most countries with the exception of Canada. Malaysia experienced the most pronounced decrease in exports of wood and wood articles. See Figure A.2 below.

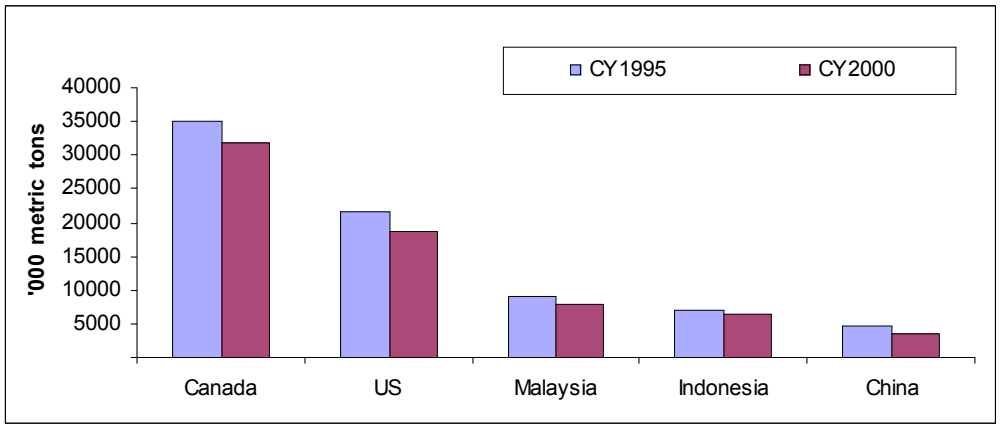
Fig A.2 Top ten exporters of wood and wood articles by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

As demonstrated by Figure A.3 below, exports by mass in 2000 were dominated by Canada (32 million metric tons), the US (20 million metric tons), followed by Malaysia and Indonesia (each about 10 million metric tons). The pattern was similar in 1995, with all countries experiencing a fall in exports by mass from 1995 to 2000.

Fig A.3 Exports of wood and wood articles by mass, 1995 and 2000

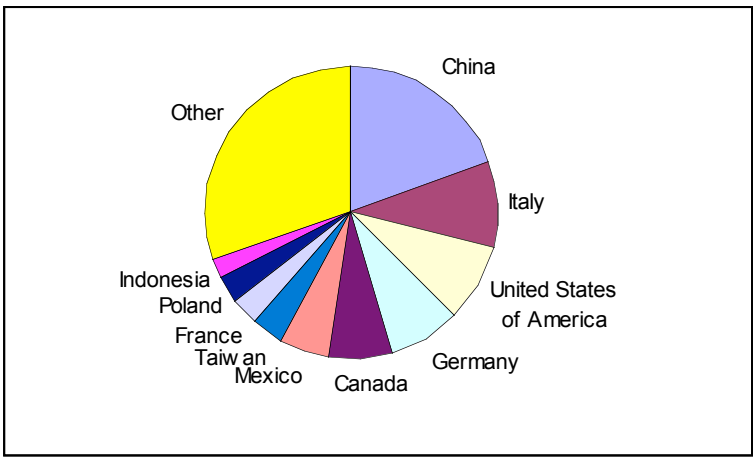


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Furniture

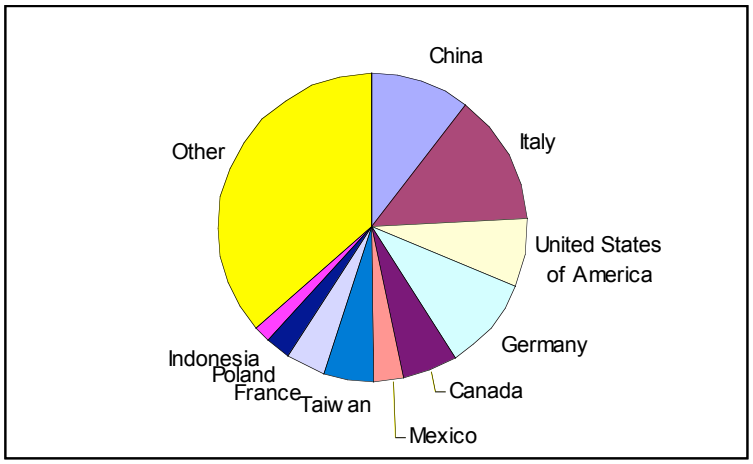
China was by far the largest exporter of furniture in 2000, with $US 16 billion exports, followed by Italy ($US 8 billion), the US ($US 7 billion) and Germany and Canada. Indonesia recorded exports of about $US 2 billion. In 1995 Italy was the largest exporter ($US 8 billion). China's exports were only $US 6 billion. Indonesia was the 10th largest exporter with exports amounting to the value of about $US 1 billion. See Figures A.4 and A.5 below.

Fig A.4 World share of furniture exports by value, 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Fig A.5 World share of furniture exports by value, 1995



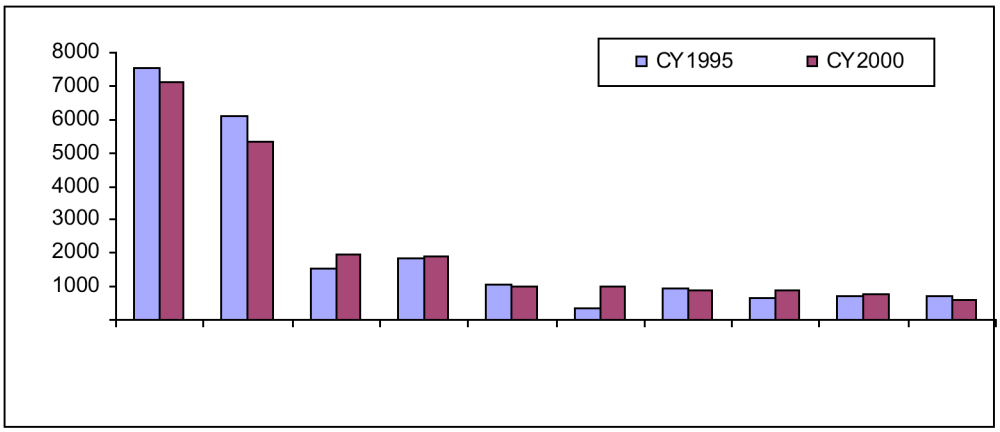
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

No statistics by volume or mass were available for furniture exports.

Pulp of wood

In 2000, exports of pulp of wood were primarily from Canada ($US 7 billion), the US ($US 6 billion), Brazil and Sweden. Indonesia was the 6th largest exporter with exports amounting to about $US 1.5 billion. For all countries, export values were higher in 1995 with the exception of Indonesia, which experienced a growth in exports of $US 500 million to about $US 1 billion. Figure A.6 below indicates the top ten exporters of pulp of wood by value for 1995 and 2000.

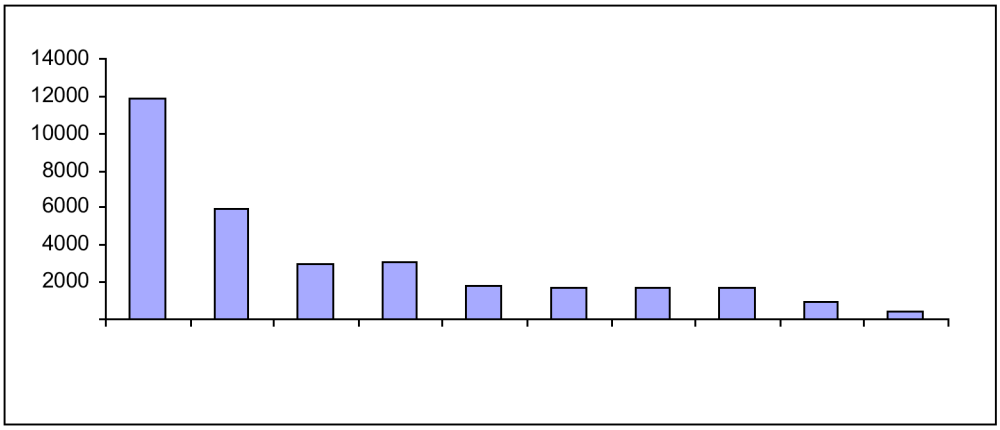
Fig A.6 Top ten exporters of pulp of wood by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Data for exports by volume (Figure A.7) place Canada (12 million metric tons) as the largest exporter, followed by the US, Brazil, Sweden, Chile and Indonesia (the latter with approximately 1 million metric tons of exports).

FigA.7 Exports of pulp of wood by volume, 2000

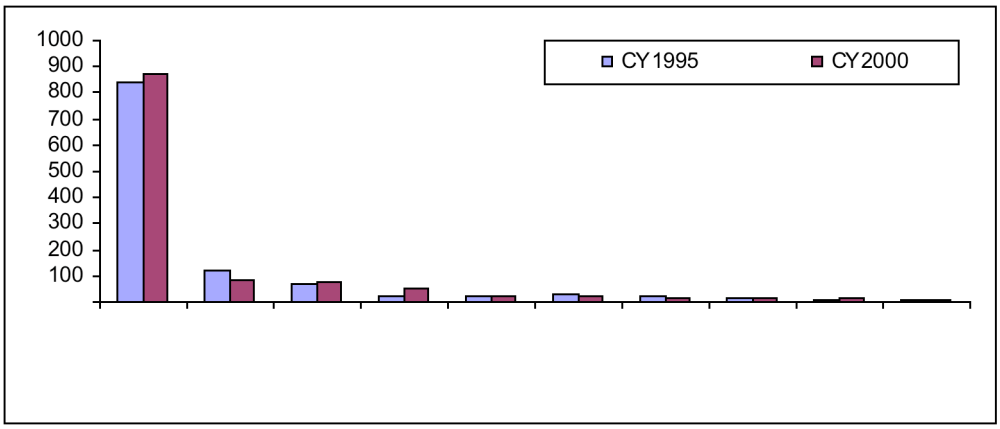


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Manufactures of straw

China was the largest exporter of manufactures of straw in 2000 ($US 850 million). The Philippines ($US 150 million), Indonesia and Vietnam were the 2nd to 4th largest exporters respectively. The top ten exporters of manufactures of straw by value are indicated in Figure A.8 below.

FigA.8 Top ten exporters of straw by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Printed books and newspapers, cork

Exports of printed books and newspapers were dominated in 2000 by the US, Germany and the UK. ASEAN countries did not feature.

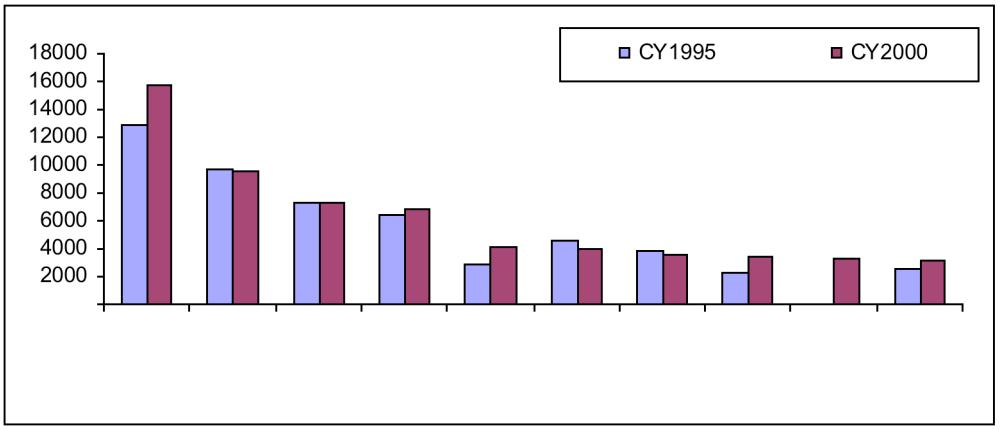
Exports of cork in both 1995 and 2000 were dominated by European countries – Portugal, Spain and France. Data by volume or mass was not available for exports of straw, cork and printed newspaper.

b) Imports by country and by product

Paper and paper board

Imports of paper and paper board in 2000 were principally accounted for by the US ($US 16 billion), Germany ($US 10 billion), UK ($US 7 billion) France ($US 6.5 billion) and Canada ($US 6 billion). These countries were followed by the Netherlands and by China. The pattern was similar in 1995, although imports to the US increased by more than any other country noted from about $US 12 billion in 1995 to $US 16 billion in 2000. See Figure A.9.

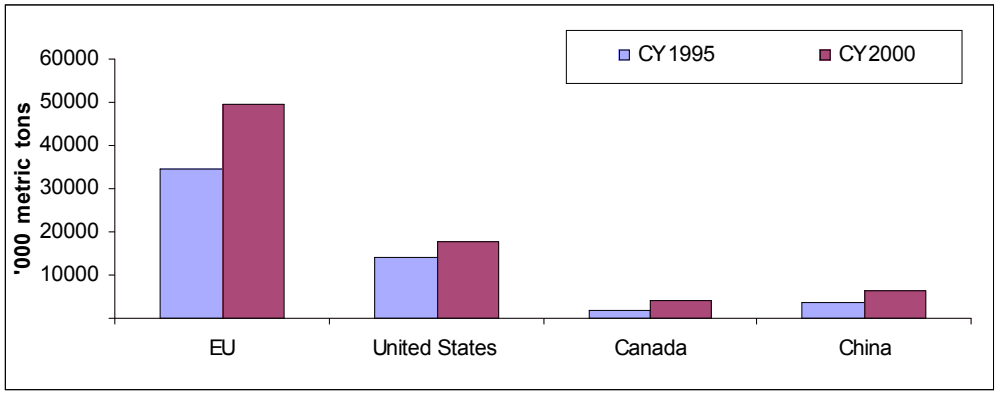
Fig A.9 Top ten importers of paper and paperboard by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Data by mass indicated the EU was the largest import market, importing about 50 million metric tons, with the US importing 20 million metric tons, followed by China (10 million metric tons) and Canada (5 million metric tons). See Figure A.10 below.

Fig A.10 Imports of paper and paperboard by mass and customs area 1995 and 2000

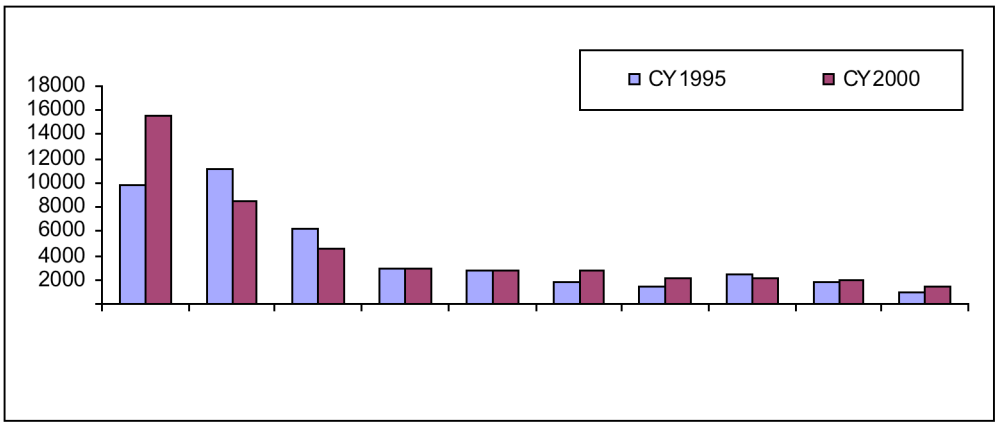


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Wood and articles of wood

In 2000, the major importers of wood and articles of wood were the US ($US 16 billion), followed by Japan ($US 8 billion) Germany ($US 5 billion), the UK ($US 3 billion) Italy ($US 2.5 billion) China ($US 2.5 billion), Canada ($US 2 billion) and the Netherlands ($US 2 billion). In 1995, the largest importer was Japan ($US 11 billion), followed by the US ($US 10 billion) and Germany ($US 7 billion). Other countries followed a similar pattern for 2000. See Figure A.11.

Fig A.11 Top ten importers of wood and wood articles by value, 19995 and 2000

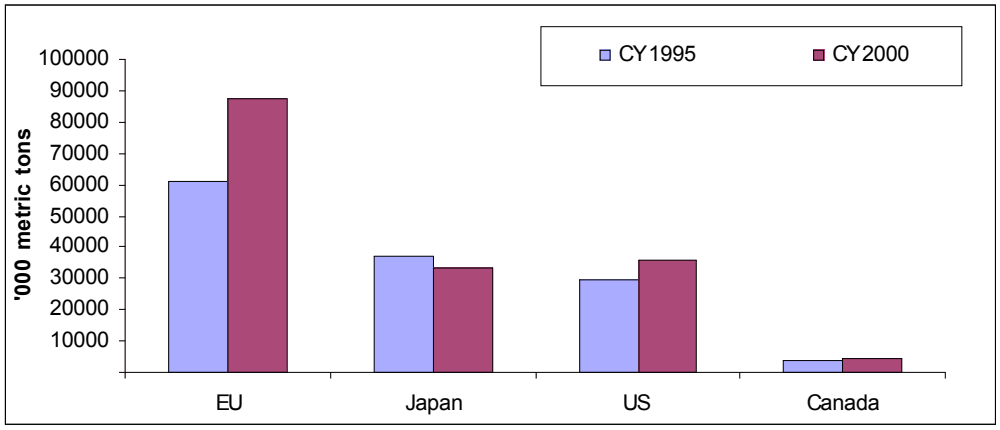


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Data by mass for 2000 (Figure A.12) indicated the EU imported about 90 million metric tons, with the US importing 40 million, Japan 39 million and Canada 80 million metric tons. In

1995 the EU imported 60 million metric tons, Japan 40 million, the US 39 million and Canada 7.5 million metric tons.

Fig A.12 Imports of wood and wood articles by mass and customs area, 1995 and 2000

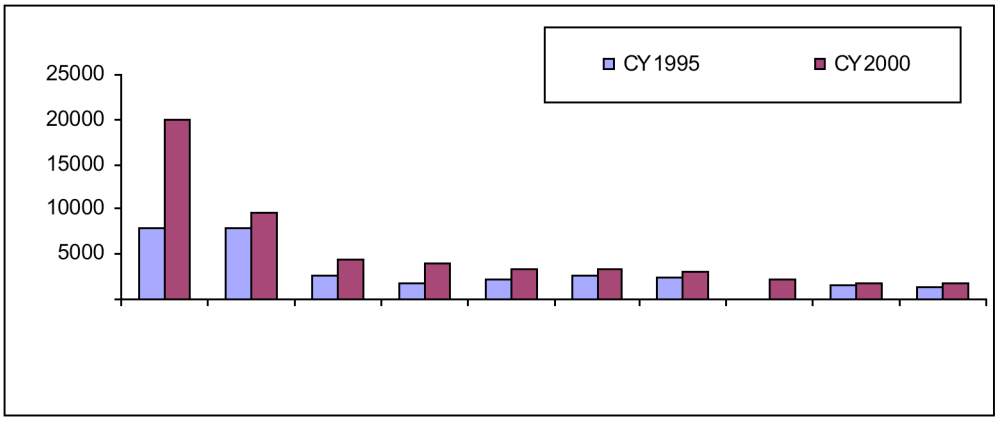


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Furniture

Main importers of furniture products in 2000 were the US ($US 20 billion), Germany ($US 10 billion) France ($US 5 billion) the UK ($US 4.5 billion) the Netherlands and Japan ($US 4 billion each). In 1995 Germany was the largest importer ($US 7 billion), followed by the US ($US 6.5 billion), France ($US 3 billion) and the UK, Canada and the Netherlands (about $US 3 billion each). See Figure A.13 below.

Fig A.13 Top ten importers of furniture products by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

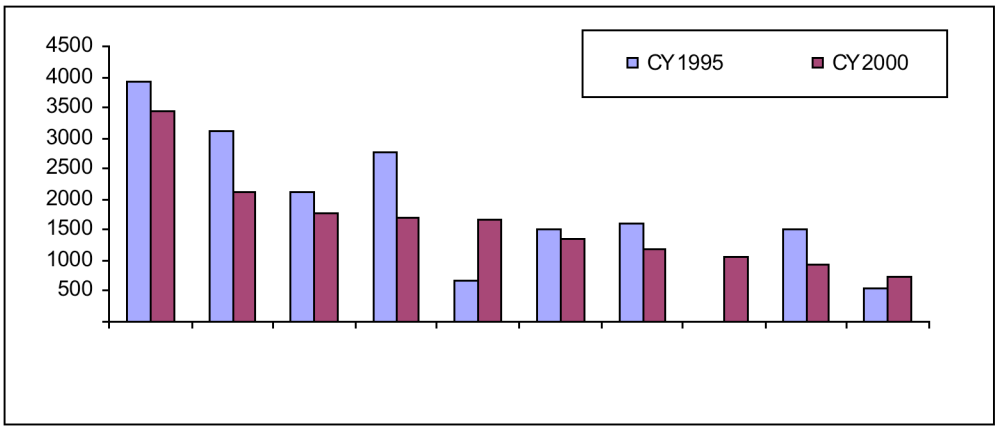
No data on volume was available for furniture imports.

Pulp of wood

For 2000 the US, Germany, Italy, Japan, China, Korea and France were the largest importers of pulp of wood. Indonesia was the 10th largest importer.

Since 1995, China and Indonesia's share of imports have increased, whilst for all other countries, the value of exports fell in 2000 compared to 1995 levels.

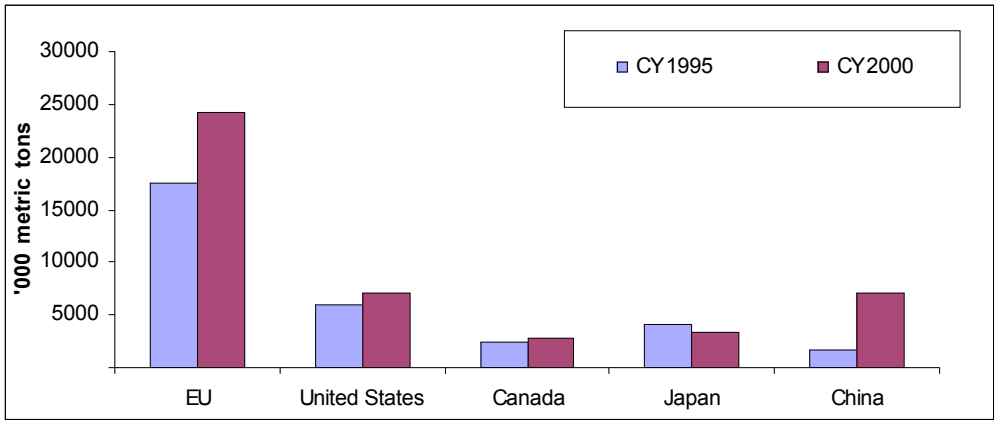
Fig A.14 Top ten importers of pulp of wood by value, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

As shown by Figure A.15 below, data by mass revealed the EU as the largest importer both in 1995 and 2000, with 25 million metric tons in 2000, followed by the US with 8 million, China (7 million), Japan (5 million) and Canada with 3 million metric tons.

Fig A.15 Imports of pulp of wood by mass and customs area, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Manufactures of straw

In 2000, the largest importers of manufactures of straw products were the US, Japan and Germany. Cork imports were dominated by France, US, Germany, Portugal and Spain and newspaper and printed books by the US, Canada and the UK.

II. ASEAN trade by country and by product

a) ASEAN exports of timber product by destination and by product

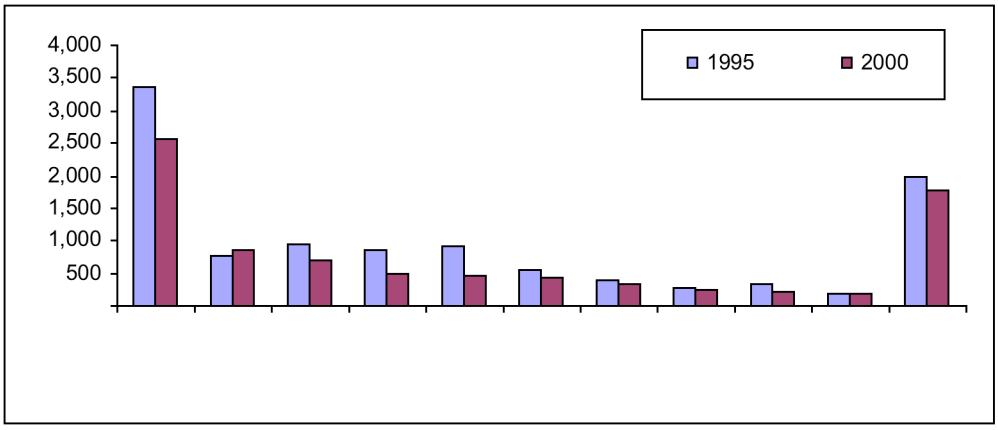
Wood and articles of wood

In 2000 the largest market for ASEAN exports of wood and articles of wood was Japan ($US 2.5 billion). In decreasing order of importance, other major markets were the US ($US 700 million) China ($US 600 million), Taiwan ($US 500 million) and Korea ($US 400 million). Exports to European countries were to the Netherlands ($US 300 million), the UK ($US 200 million) and Germany ($US 100 million).

In 1995 Japan was the largest market, followed by China, Taiwan and Korea. Germany and the Netherlands were the largest European markets.

See Figure A.16 below.

Fig A.16 ASEAN exports of wood and wood articles by value and destination 1995 and 2000



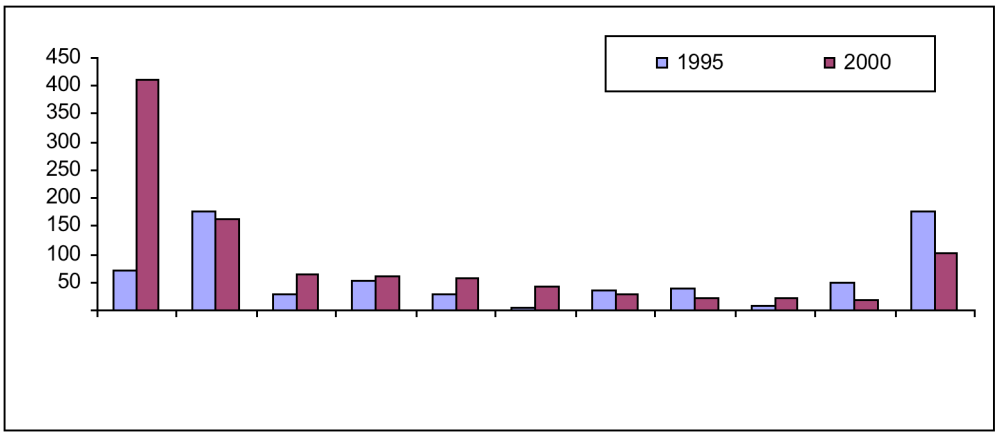
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Pulp of wood

For ASEAN exports of pulp of wood, in 2000 the largest markets were China ($US 400 million) Korea ($US160 million) Japan and Italy ($US 50 million each) followed by the Netherlands and Australia. In 1995 Korea was the largest market ($US 170 million) with exports to China at $US 60 million. Exports to Italy and Netherlands were $US 50 million and $US 30 million respectively.

Figure A.17 below depicts ASEAN exports of pulp of wood by value and destination for 1995 and 2000.

Fig A.17 ASEAN exports of pulp of wood by value and destination 1995 and 2000



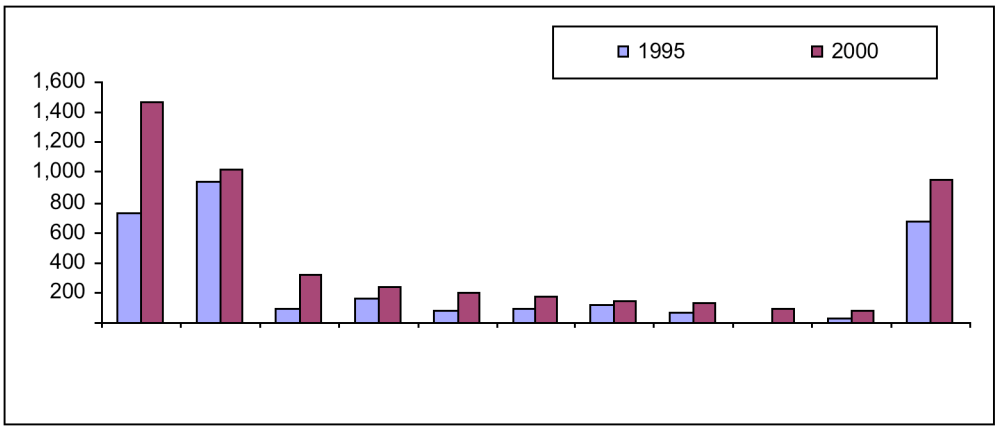
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Furniture

ASEAN furniture exports in 2002 went principally to the USA ($US 1.5 billion), Japan ($US 1 billion) and the EU ($US 850 million).Exports to the UK, Singapore and Australia were $US 300 million, $US 200 million and $US 170 million respectively. The main European markets were the Netherlands ($US 160 million), Germany ($US 150 million), France ($US 140 million) and Belgium ($US 100 million).

In 1995, Japan was the largest market with $US 900 million, followed by the US and Singapore. Figure A.18 below illustrates this.

Fig A.18 ASEAN exports of timber furniture by value and destination, 1995 and 2000



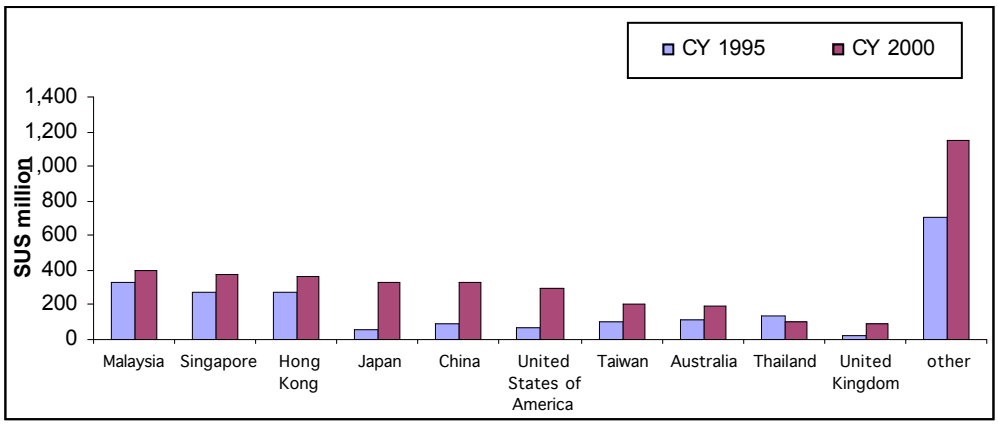
Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Paper and paper board

Exports of paper and paperboard were spread between Malaysia ($US 396 million), Singapore ($US 374 million), Hong Kong ($US 363 million), Japan ($US 327 million), China ($US 326 million) and the US ($US 294 million). Taiwan ($US 209 million), Australia ($US

195 million), Thailand ($US 102 million) and the UK ($US 86 million) were also export destinations. See Figure 19 below.

Fig A.19 ASEAN exports of paper and paperboard by value and country of origin 1995 and 2000

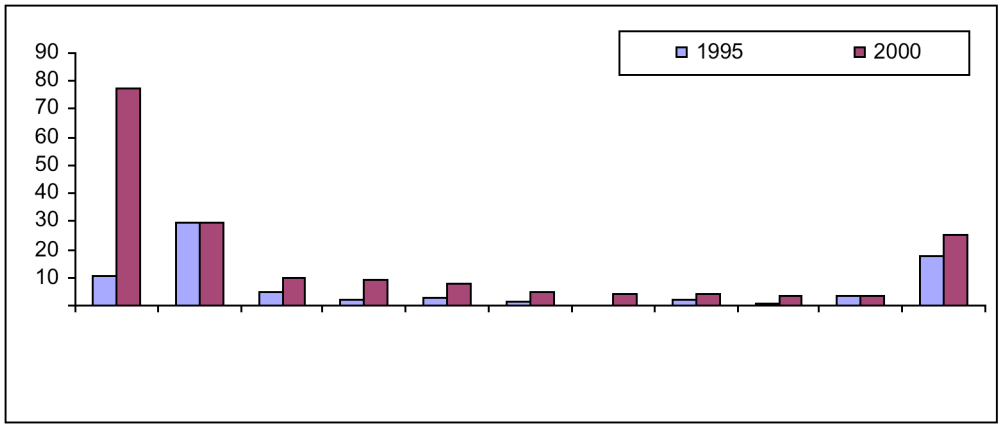


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Manufactures of straw

As indicated by Figure A.20 below, the US and Japan, followed by the Germany, the UK, France and Italy were the largest markets for ASEAN exports of manufactures of straw in 2000.

Fig A.20 ASEAN exports of manufactures of straw by value and destination, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Printed books and newspapers, cork and cork articles

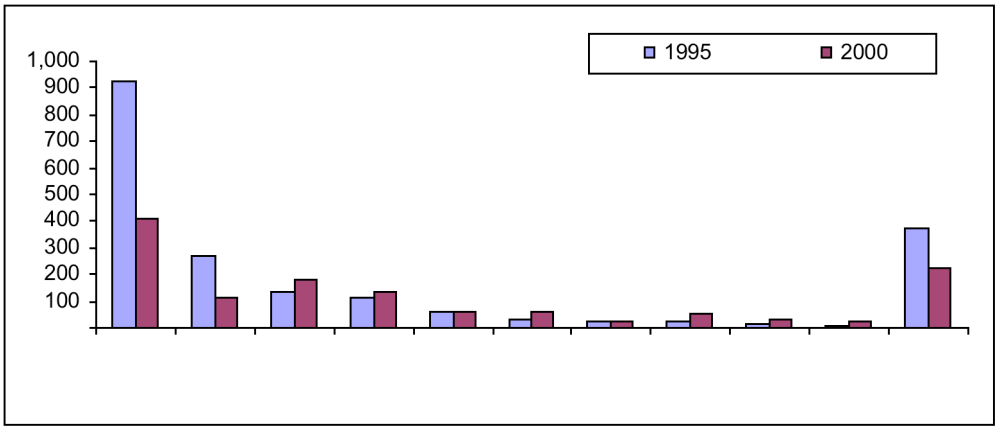
For printed books and newspapers, the largest markets for ASEAN exports in 2000 were the US ($US 150 million), the UK ($US 70 million), and Malaysia ($US 60 million). For exports of cork and cork articles, the largest markets were Singapore ($US 0.8 million) and Malaysia ($US 0.2 million).

b) ASEAN imports of timber products by major supplier

Wood and articles of wood

In 2000, ASEAN imported wood and articles of wood from Malaysia ($US 400 million), the US and Indonesia. Myanmar and Laos were also suppliers to ASEAN of wood articles. In 1995, the pattern of principal suppliers was the same. See Figure A.21 below.

Fig A.21 ASEAN imports of wood and wood articles by value and origin, 1995 and 2000

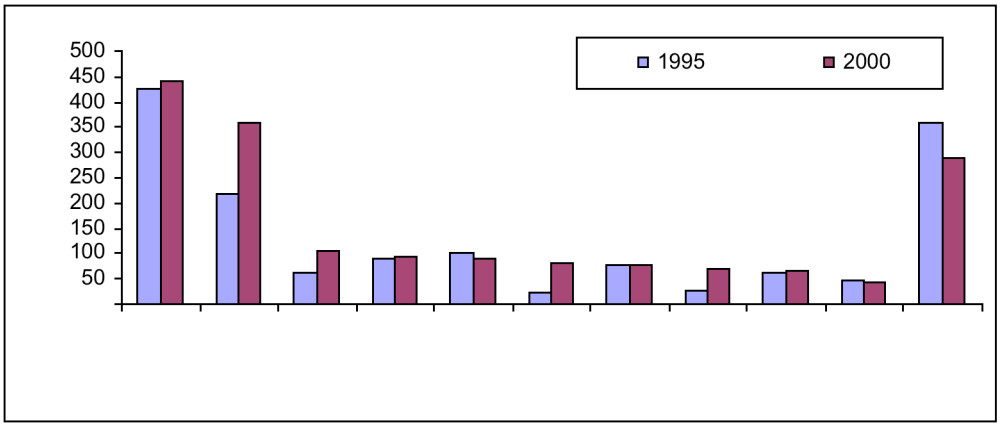


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Pulp of wood

In 2000, ASEAN imported pulp of wood products from the USA ($US 450 million), Canada and South Africa. As indicated by Figure a.22, the pattern was similar in 1995.

Fig A.22 ASEAN imports of pulp of wood by value and origin, 1995 and 2000

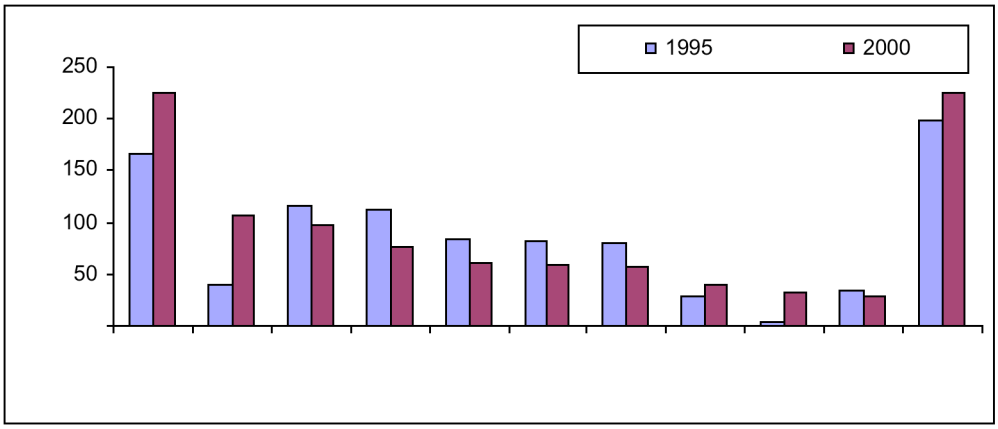


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Furniture

The main suppliers of furniture to ASEAN in 2000 were Malaysia ($US 225 million), China ($US 110 million) and the USA. In 1995, imports from China were less than $US 30 million. See Figure A.23 below.

Fig A.23 ASEAN imports of furniture by value and origin, 1995 and 2000

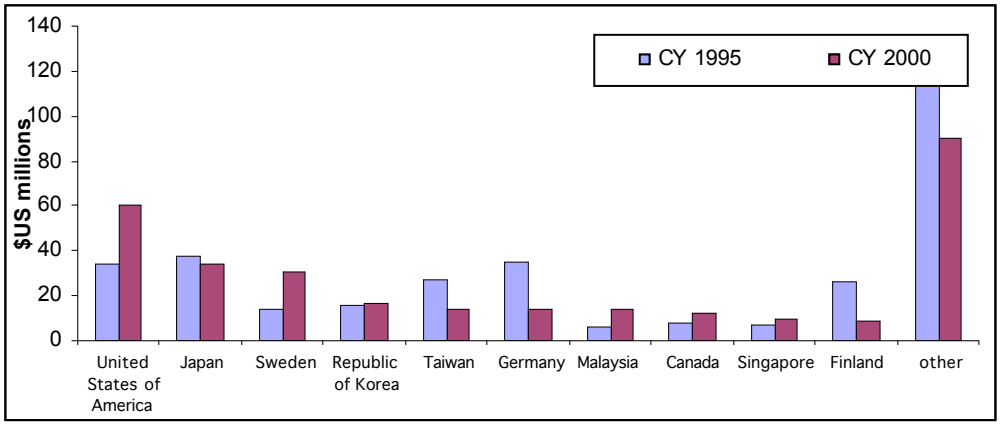


Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Paper and paper board

As indicated by Figure A.24, ASEAN imports of paper and paper board were sourced from mainly Japan, the US, Indonesia, Malaysia and Singapore.

Fig A.24 ASEAN imports of paper and paperboard by value and origin, 1995 and 2000



Source: Department of Foreign Affairs and Trade, STARS Database, accessed 22/12/03

Manufactures of straw, printed books and newspapers, cork and cork articles

Suppliers to ASEAN of manufactures in straw in 2000 were China ($US 2.8 million), Taiwan ($US 1 million) and Hong Kong ($US 0.7 million).

The USA, the UK and Malaysia were suppliers of imports to ASEAN of printed books and newspapers in 2000. Portugal and China were the main suppliers of cork and articles of cork.

Annex 2 - Bilateral and regional trade agreements – rules and principles pertaining to ecolabels

The North American Free Trade Agreement

The North American Free Trade Agreement between The US, Canada and Mexico contains specific provisions on standards and technical regulations in the free trade area. It applies to "standards related measures" which include voluntary standards, technical regulations as well as conformity assessment procedures.

It affirms the rights and obligations of the parties under the General Agreement on Tariffs and Trade (GATT) and the TBT agreements. It sets out disciplines in the use of standard related measures and requires that such standards not be discriminatory in trade or create unnecessary obstacles to trade. It allows members to maintain standards for the "legitimate purposes" of health, safety, and environmental protection. Like TBT rules, each party is required to base their standards on international standards where this is appropriate. There are also provisions for strengthening obligations on equivalence, transparency and notification. Unlike TBT rules, the agreement expressly requires that parties seek to ensure that sub national and non governmental standards bodies comply with the agreement.

NAFTA does not deal exhaustively with the environment but does contain some environmental provisions. It allows general exceptions to trade rules as they appear in GATT Article XX. It affirms the rights of the partis under certain international and bilateral environmental agreements, including the right to use discriminatory trade measures. These rights prevail over obligations in NAFTA in the event of an inconsistency. Specific environmental provisions are dealt with separately in a side agreement on Environmental Cooperation. The side agreement does not contain any trade provisions and is not subject to penalties for on compliance under the main agreement.

Recent US bilateral free trade agreements (FTAs)

The US/Chile free trade agreement affirms WTO rules under the TBT Agreement and contains some additional provisions to facilitate mutual recognition of standards, transparency and notification. Separate obligations on the environment require each party to "effectively enforce" its own environmental laws, the penalty for non compliance being monetary penalties in the first instance, or trade sanctions where this cannot be paid.

Similar provisions apply in the US/Singapore Free Trade Agreement and the draft of the Australia/US Free Trade Agreement.

Australian bilateral free trade agreements

Standards under the Australia/New Zealand Closer Economic Relations Agreement (CER) are governed by the WTO TBT Agreement. There are additional and complementary agreements of less than treaty status between the two countries for mutual recognition and harmonisation of standards. Food standards are developed

jointly under a single regulatory agency and there is a joint food standards code. CER contains no specific provisions on the environment, but does allow some exceptions to trade commitments for environmental reasons akin to the WTO and which mirror the provisions of Article XX of the GATT.

The Australia Singapore FTA (SAFTA) includes provisions applicable only to mandatory standards. It provides rights for parties to adopt and maintain mandatory standards in accordance with international rights and obligations and those necessary to ensure the quality of imports, health and safety and protection of the environment. It also permits each party to take "appropriate" measures for goods that do not conform to its mandatory requirements, including withdrawing goods from the market or prohibiting their placement upon the market.

All goods are subject to the above provisions of the agreement unless specified in a sectoral annex to the agreement or where "otherwise specified by a mandatory requirement of a party." There are no provisions relating to the environment.

The draft of the Australia/US Free Trade Agreement includes similar provisions on the environment and standards to US bilateral agreements noted above.

ASEAN Free Trade Area

The ASEAN Free Trade Area (AFTA) provides for the elimination of tariff barriers between member countries in the interests of furthering ASEAN economic integration. It does not have nay legal or binding provisions relating to standards and standards setting. ASEAN itself has made a political commitment toward efforts to accelerate the harmonisation of product standards between member countries and the implementation of mutual recognition arrangements to facilitate ASEAN economic integration. ASEAN has no specific mandate related to the environment or any rules pertaining to environment under AFTA.

Africa/ACP

The Cotonou Agreement is a partnership agreement between the EU and ACP states (African, Caribbean and Pacific island states). It contains some trade provisions but is principally an agreement for the provision of aid from the EU to recipient countries to enhance sustainable development and poverty reduction, democratic principles and respect for human rights. Part of the aid is delivered to recipients through granting of trade preferences, conditional upon upholding the requirements of the agreement.

The agreement affirms WTO TBT obligations for standards and quality assurance and encourages cooperation in standard setting between member recipients and with the EU. There are some provisions on trade and the environment which provide parties to commit to the development of international trade in a way that ensures sustainable management of the environment and which is consistent with international conventions and undertakings in the area. There are also commitments for ensuring cooperation for the improvement of environmentally friendly production methods in relevant sectors. Further provisions on the environment focus on cooperation on environmental protection, including supporting specific measures and schemes, and current and future regional and international commitments concerning mineral and natural resources such as tropical forests.

Annex 3 – The proposed EU ecolabel for furniture

The European Commission is also currently in the process of including in its voluntary ecolabeling scheme, an EU ecolabel for furniture that could discriminate against wood. A draft Commission Decision[72] for establishing criteria for the award of a community ecolabel to furniture requires that furniture[73] comply with certain ecological criteria. The criteria are divided into five categories which apply to composition, materials, surface treatment, assembly of furniture and final ecolabeled furniture.

Criteria on *composition* mandates that energy input data of material applied in furniture be calculated and provided by the applicant on the basis of average energy consumption related to production and manufacturing of materials

Criteria on *materials* require that materials, including solid wood and wood based materials comply with "material specific requirements".

- For solid wood these include:
  - All virgin wood form forests must originate from sustainably-managed forests, and;
  - At least 50 percent of this virgin solid wood must originate from sustainably-managed forests which are independently certified and meet specific criteria;
  - Wood that is not certified as being from sustainably-managed forests must not originate from illegal harvesting, genetically modified trees or uncertified high conservation value forests;
  - The applicant must indicate the type, quantities and origins of the wood used in the ecolabeled product and the origin of the virgin wood must be indicated with "sufficient precision" to allow checks (EG: appropriate certification and documents must be provided);
  - Virgin wood and wood used in wood based material not be treated with certain substances or preparations listed as hazardous according to certain EU Directives. Moreover, substances or preparations deemed hazardous are prohibited in the production process of materials applied in the ecolabeled furniture.

- For wood based materials, the criteria include:
  - All virgin wood form forests must originate from sustainably-managed forests, and
  - At least 20 percent of the virgin wood from forests needs to be certified;
  - Wood that is not certified as being from sustainably-managed forests must not originate from illegal harvesting, genetically modified trees or uncertified high conservation value forests
  - Wood based materials must comply with criteria for surface treatment;
  - Post consumer wood, chips or fibres applied in the production of wood-based materials must comply with the EU industry standard;

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[72] Commission Decision establishing ecological criteria for the award of the Community eco-label to furniture, Draft 10 December 2003, available at http://europa.eu.int/comm/environment/ecolabel/pdf/furniture/draftcriteria_101203.pdf

[73] Article 2 specifies that the product group is limited to domestic furniture used indoors and contract furniture, limited to all furniture used indoors for business purposes. Outdoor furniture is excluded. *Ibid.*

- Virgin wood and wood used in wood based materials must not be treated with certain substances or preparations listed in an annex to the Decision.

Criteria for *surface treatment* apply to ecolabeled products with wood or wood based materials greater than 1 percent. They prohibit the use of certain substances deemed to be hazardous or harmful for the surface treatment of furniture or its component parts. Criteria for the *assembly* of furniture prohibit the use of certain adhesives and binding agents. Criteria for the *final product* additionally requires that the ecolabeled products be easily dismantled and make possible the recovery and recycling materials. It also requires that packaging of the final product be made of recyclable material or be a multiuse system.

The draft criteria are expected to be finalized soon.

Whilst the ecolabel is voluntary and therefore may not raise concerns of permissability with WTO rules, it may nevertheless create barriers to timber trade due to requirements comply with criteria for production and methods of processing. This relates to requirements for wood to be certified as produced from sustainably-managed forests, and the prohibitions on the use of certain substances in the methods of processing and treatment of wood. It is likely that the criteria could operate to discriminate against wood that is not from sustainably-managed forests or which is treated with certain agents.

Exporters in New Zealand have expressed concern about the ecolabel criteria. They claim that given the small percentage of global forest that is certified and the lack of mutual recognition between independent schemes, in effect the ecolabel means that only a small proportion of timber will be considered by the EU scheme to be acceptably certified[74].

[74] see www.nzforestry.co.nz, accessed 16/02/04.

Annex 4 – Country procurement policies

i) The WTO Agreement on Government Procurement

The WTO Agreement on Government Procurement (GPA) is a plurilateral agreement. This means that only WTO members that have chosen to be bound by it are subject to its rules. Parties include major timber importers such as the US, the EU and Japan.

The rules of the GPA apply only to laws, regulations and procedures for procurement that parties have agreed are subject to its provisions. It differs from other WTO agreements in that it uses a "positive list" approach whereby the only measures subject to its provisions are listed in Annex to the agreement. The main requirement of the GPA is that each party abides by the principle of non-discrimination in government procurement. In addition, technical specifications included in contracts must not be applied so as to cause unnecessary obstacles to international trade.

Permitted technical specifications for contracts under the Agreement appear to offer limited scope for criteria based on production and process methods. Technical specifications do not prohibit process and production methods[75], but do specify that they must be *where appropriate*, in terms of performance rather than design or descriptive characteristics and be based on international standards where such exist. In addition, the Agreement prohibits in most cases, technical requirements for a particular design or type, specific origin, producer or supplier provided that provision is made for equivalent requirements[76]. This would appear to limit but not prohibit the use of technical specifications based on criteria that timber be sustainable or legal or environmentally certified.

There is scope for specifying environmental requirements in the evaluation criteria for award of contracts. Award of contracts must be granted to the tender who is capable of undertaking the services and whose tender is "either the lowest tender or the tender which in terms of specific evaluation criteria set forth in the notice or tender documentation is determined to be the most advantageous."[77] "Most advantageous" in not further defined.

Notably, the scope for use of PPM based criteria in contract specification or evaluation may also be limited by general WTO rules of interpretation on the use of PPMs and non-discrimination (See Section D.I).

ii) The European Union

The EU has procurement policies which bind all member states and their respective procurement policies. Public Procurement Directives at the EU level establish specific

[75] referred to in Article VI of the GPA as "laying down the characteristics of products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procures prescribed by procuring entities".

[76] Article VI.3 states "There shall be no requirement of reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "equivalent" are included in the tender documentation."

[77] Article XIII.4.

procedures to guarantee that procurement contracts *above a certain value* are awarded in a competitive, transparent and non-discriminatory manner.

In the technical specification for determining the subject matter of the contract, there is some scope to define requirements relating to environmental performance, including the possibility to require the use of specific production processes. This is limited to where it helps to specify the performance characteristics of the product. The production process covers all requirements and aspects related to the manufacturing of the product which contribute to the characterizing of the products without the latter necessarily visible in the end-product. Contracting authorities must however, ensure that this is non-discriminatory[78].

The procurement directives allow for member states to refer to eco-labels in the technical specifications for the contract which encompass criteria based on life cycle analysis. In the absence of mandatory references or where they require a higher level of environmental protection than that laid down in standards or legislation, contracting authorities can define the technical specifications related to environmental performance in line with ecolabel criteria and may indicate that products having these ecolabel certificates are deemed to comply with the technical specifications of the contract documents[79].

For award of the contract, environmental elements can serve to identify the most economically advantageous tender in cases where these elements imply an economic advantage for the purchasing entity, attributable to the products or service which is the object of procurement and provided that the principle of non discrimination is observed. The environmental soundness of a product without further specification is as such, not measurable and does not necessarily have an economic advantage for the contracting authority, however, the "environmental soundness" of a product can be taken into account (for example, the consumption of natural resources, where the environmental objective is translated into specific, product related and economically measurable criteria by requiring a rate of energy consumption).[80] The European Court of Justice (ECJ) has confirmed that although the contract may include award criteria that are not of a purely economic value, they must be linked to the subject matter of the contract. Costs incurred during the life cycle of a product and which will be borne by the contracting authority (as opposed to the world at large) after the purchase of the product may also be taken into account for the assessment of the most economically advantageous tender[81].

The directives do not cover contract clauses which must be observed for execution of the contract. These are left to be determined by EU member states on the condition that they comply with European community law generally. The European Commission has noted that such conditions may specify products to be delivered by a certain mode of transport which may imply that factors preceding the possession of the product by the authority, such as environmental factors, may be permitted as contract conditions. This however, has not been tested.

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[78] *Ibid*. It should be noted that this comment is taken from the Interpretative Communication of the Commission (see note 93 above) and not explicitly noted in the Directive itself. The interpretation of the Commission has not yet been affirmed or challenged.

[79] European Commission COM(2001) 274 final Commission Interpretative Communication on the Community Law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement, page 12.

[80] *Ibid*, page 20.

[81] *Ibid*, page 21.

For timber products, in the technical specification defining the subject matter of the contract, authorities are able to specify production processes provided that this is linked to the performance characteristics of the product. Ecolabels can be used as a reference, including where they utilize life cycle analysis. Terms such as "legally produced" or "sustainably produced" could be specified as criteria for production processes of timber, provide it could be established that this was sufficiently linked to the performance characteristics of the product. This could prove difficult.

At the contract award stage, it is possible that purchasers may evaluate tenders using environmental criteria, including life cycle analysis, provided that they are part of the assessment of the most economically advantageous tender and provided that they relate directly to costs borne by the contracting authority. Whether timber has been legally or sustainably produced may not necessarily incur costs for the contracting authority, however according to ECJ case law may be taken into account if determined to be "sufficiently linked" to the subject matter of the contract.

It is more likely that legal and sustainable sourcing of timber could be specified in the contract conditions, which is the approach taken by the UK government (see below) and as yet not contested under EU case law.

In 2003 the EU adopted a common position on two new directives[82] in public procurement that may widen the ability of public bodies to take account of environmental requirements in their procurement of timber products. The position was approved in January 2004. Member states are due to bring their domestic legislation into conformity with the new Directives by 2005. The new Directives were specifically aimed at simplifying and modify the existing directives to further integrating environmental and social considerations into procurement policy.

The new Directives take the current ECJ case law as a starting point (see above). This means that a contracting authority must award a contract on the basis of the most economically advantageous tender but may take into account environmental criteria in the award criteria, provided that the criteria are expressly mentioned in the contract documents or the tender notice, are connected with the subject matter of the contract and comply with principles of Community law including the principles of non-discrimination. This also allows contracting authorities to require specific environmentally friendly production methods[83]. This would potentially allow purchasing authorities to include in technical specifications for contracts the method by which timber products are produced and the environmental effects of timber products, however it may not necessarily permit the application of environmental criteria that is of no direct economic consequence to the purchasing authority, for example environmental harm to forests or person in other countries.

The requirement that contractors supply timber from legal and sustainable sources would be permitted as contract conditions. Because technical specifications remain linked to the

[82] Directive of the European Parliament and of the Council for the coordination of procedures for the award of public supply contracts, public services contracts and public works contracts COM (2000) 275 final/2 30 August 2000 and Directive of the European Parliament and of the Council Coordinating the Procurement Procedures of Entities operating in the Water, Energy and Transport sectors Com (2000) 276 final/2 31 August 2000.

[83] EU Institutions Press Release 3 December 2003, IP/03/1649 Public Procurement: Commission welcomes conciliation agreement on simplified and modernized legislation. See http://europa.eu.int, accessed 24/02/2004.

performance and functional characteristics of the product it is not clear whether purchasing entities could apply criteria in the technical specification for the contract such that timber must be from legal and sustainable sources.

The full application of the Directives remains to be tested under EU case law once they are implemented.

iii) US

There are currently no US government procurement policies which restrict the use of timber at the federal level. Generally, US procurement at the Federal level is governed by the Federal Acquisition Regulations. Sub part 23.2 prescribes policies and procedures supporting the government's program for protecting and improving the quality of the environment by acquiring energy and water efficient products and services, environmentally preferable products and products that use recoverable materials. There are no specific policies relating to the procurement of timber products.

Under various authorities, the policy of the US government is to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products and help foster markets fro emerging technologies[84]. The regulations provide that when acquiring energy using products, agencies shall purchase certain energy efficient items where these are cost effective and available.[85]

Government policy on the use of recovered material considers costs, availability of competition and performance. The objective is to acquire objectively and in a cost effective manner, products that meet reasonable performance requirements and that are composed of the highest percentage of recovered material practicable[86].

The Federal Acquisition Regulations also prescribe policies for acquiring environmentally preferable products and services. Agencies are require implementing cost effective contracting preference programs promoting energy efficiency, water conservation and the acquisition of environmentally preferable products and services and employ strategies that impellent these objectives[87].

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[84] Federal Acquisitions Regulations Sub part 23.2 – Energy and Water Efficiency and Renewable Energy available at http://www.arnet/gov/far .

[85] For example, Executive Order 13123 of 1999 Greening the Government through efficient energy management requires agencies to make maximum use of energy savings performance contacts when cost effective.

[86] For example, the US Resource Conservation and Recovery Act of 1976 and Executive Order 13101 of 1998 Greening the Government through Waste Prevention, Recycling and Federal Acquisition prescribe policies for acquiring Environmental Protection Agency (EPA) designated products. The EPA issues procurement guidelines which designate products that are or can be made with recovered materials and to recommend practices for buying these products. When a product is designated federal agencies are required to purchase that product with the highest recovered material content level practicable. By 2003, the EPA had designated 54 products in 8 categories including construction products and paper and paper products. Ibid, Subpart 23.4 – Use of Recovered Material. Environmentally Preferable Purchasing is a federal wide program that encourages and assist Executive agencies in the purchasing of environmentally preferable products and services. See http://www.epa.gov/oppt/eppp/about/about.htm and Ossterhuis, Frans European Policies for greener public procurement: product policy, Institute for Environmental Studies, August 2003

[87] Federal Acquisitions Regulations Sub part 23.7 -Contracting for Environmentally Preferable Products and Services available at http://www.arnet.gov/far .

There are however, some local government measures which restrict the use of tropical timber in municipal projects, such as in Santa Monica, California and New Jersey.

iv) Japan

Japan has basic policies for promoting "comprehensive and planned procurement of materials, components, products and services with low environmental impact".[88] The policies are governed by the Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and other entities[89].

The Law specifies that entities are *to endeavour* or choose eco friendly goods while giving consideration to the appropriate use of the budget[90].

The law also requires that government institutions formulate and publish a "green purchasing policy" based on the law take this into consideration in its budget and planned projects and purchase goods and services during the year based on the policy. Policies are to consider environmental conservation when making purchasing decisions, in addition to considerations of price and quality. It is also preferable that the policy provide for the selection of goods and services with consideration of their ability to reduce the environmental impact through the product life cycle from resource acquisition to disposal[91]. The law also obliges all national departments to monitor their policy by reporting on their purchasing share of a specific list of green products.

[88] Basic Policy on Promoting Green Purchasing (Provisional Translation), February 2003, available at Japan Ministry of the Environment http://eco.goo.ne.jp/gpn/index.html, accessed 27/02/04.

[89] Law No. 100, 2000.

[90] Article 3(1).

[91] Basic Policy on Promoting Green Purchasing (Provisional Translation) February 2003, available at Japan Ministry of the Environment http://eco.goo.ne.jp/gpn/index.html, accessed 27/02/04.

Endnotes

[i] Life cycle analysis is a process which attempts to evaluate and take into account a products' environmental impacts throughout its life cycle, from the use of natural resources as inputs, through emissions during the production, distribution and use stages, to the use of natural resources and/or emissions during the disposal stage. This is defined by the ISO as "*a systematic tool of assessing the environmental impacts associated with product or service system to; build and inventory of inputs or outputs, make a qualitative evaluation of those inputs and outputs and identify the most significant aspects of the system relative to the objective of the study. Life cycle analysis considers the environmental impact along the continuum of a products' life cycle (i.e.; cradle to grave) form raw material acquisition to production, use and disposal*". See WT/CTE/W/79 (1998) Market Access Impact of Eco-Labelling Requirements, Note by the Secretariat.

[ii] It should be noted that data for furniture may in some cases be overstated as statistical reporting for some countries includes furniture other than timber furniture. It was not possible to separate timber furniture from other furniture for this report. Given the importance of the product category for global and ASEAN timber trade, the consultant has chosen to include data on furniture but draw this to the attention of the reader.

[iii] COMTRADE and DFAT data is subject to gaps and discrepancies which are unavoidable and must be treated with caution. Statistics based on value in $US were most widely available but should be carefully examined given fluctuations in price over time. Data by mass and volume is limited and not always useful for comparison given the difference between units of measurement between products (cubic metres and metric tons). In addition, not all countries and particularly not all ASEAN countries provide consistent and up to date reporting on the products analyzed, as a result of which there may be some gaps in the data. Reporting countries for HS based data in ASEAN were Malaysia, Thailand, the Philippines, Indonesia and Singapore. In some sections, this has been supplemented with data from the ITTO, FAO and ADB in order to provide a more complete picture.

[iv] The ITTO data uses different categories of traded timber and not data collated by HS code for timber products as above. Product categories include logs, sawn wood, veneer wood and plywood for all timber including tropical timber.

[v] Such measures include tariffs, quotas, internal taxes and regulations that discriminate against imports, subsidy and dumping practices, and state trading as well as customs procures and a variety of other non-tariff measures which serve as barriers to trade. Brown Weiss and Jackson (eds) (2001) Reconciling Environment and Trade, Transnational Publishers, New York, page 6.

[vi] Article 4.2 of the Agreement incorporates the Code.

[vii] This latter requirement however, differs from Article 2.2 in that it does not define or clarify what constitutes "unnecessary obstacles".

[viii] This was the view of the GATT panel in the *Tuna II* Case. United States – Restrictions on Imports of Tuna 1994, unadopted (herein referred to as *Tuna Dolphin II)*. The panel contended that Article III did not apply to laws related to policies that could not affect the product as such.

[ix] Prior to the existence of the TBT agreement, a GATT disputes panel (United States – Restrictions on Imports of Tuna, 1991unadopted (herein referred to as *Tuna Dolphin I*) held that voluntary labeling by itself was not inconsistent with the GATT. In doing so, it also implicitly recognized that voluntary schemes based on PPMs could be consistent with WTO requirements[ix] provided they observed the principles of MFN and national treatment. The decision appeared to distinguish between government-sponsored trade discrimination that results in barriers to entry for producers, and discrimination against certain criteria for products resulting from consumer demand (See also Appleton, Arthur (1997) Environmental Labelling Programmes: International Trade Law Implications, Kluwer Law International, London p 158.)

[x] The scheme may also be seen as unnecessarily trade restrictive if it uses criteria that is not relevant to the country of origin of the product and is not based on objective considerations, such as in terms of the raw materials or process methods that are required to qualify for award of the label. See Zarilli, Jha and Vossenaar (eds) (1997) Eco-Labelling and International Trade, United Nations, Paris p 22.

[xi] Labeling issues are largely horizontal – concerns raised in the context of labeling have also arisen in relation to general product safety or performance including food safety in the broader context of the SPS Agreement and agriculture. These are not discussed here. Labeling issues have also been the subject of numerous discussions within the formal sessions of the TBT Committee under the agenda item on implementation and administration of the TBT Agreement.

[xii] This stated, "*well designed eco labeling schemes can be effective instruments of environmental policy to encourage development of an environmentally conscious public*".

[xiii] The 2001 Ministerial Declaration , paragraph 32 states that "We instruct the Committee on Trade and Environment, in pursuing all items on its agenda within its current terms of reference, to give particular attention to: (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; (ii) labeling requirements fro environmental purposes. Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate with respect to future action, including the desirability of negotiations." At the Ministerial Meeting in Cancun is September 2003, the CTE was to make recommendations with respect to future action on the subject, such as identifying the need to clarify WTO rules and the desirability of negotiations. Due to the failure of the talks at Cancun, no such progress was made.

[xiv] The EU has stated that the relationship between WTO rules for non-product related process and production methods and their compatibility with ecolabeling schemes based on a life cycle approach should be clarified. Rules for the creation and administration of schemes based on such should be created. Subject to procedural safeguards, there should be scope within WTO rules to use non-discriminatory, non protectionist and market-based instruments for achieving environmental objectives. See WT/CTE/W/185, WT/CTE/W/181, WT/CTE/W/170, WT/CTE/W/147 and WT/GC/W/194.

Switzerland has noted that the division between marks and labels based on product characteristics, based on process and production methods and on non-product related process and production methods should be clarified and reconsidered. The applicability of the TBT Agreement to non product related process and production methods should also be clarified. See WT/CTE/W/192, WT/CTE/W/168, WT/CTE/W/139, WT/GC/W/265.

[xv] The EU proposed in 2002 that the TBT Committee examine the need to clarify WTO rules applicable to environmental labeling, including eco-labels, through a common understanding, interpretation or guidance on labeling requirements. It noted that the discussion should not undermine existing TBT rules or create scope for protection, but also added that discussion on voluntary schemes should not prejudice following discussions on other types of ecolabeling schemes, including mandatory environmental labels (See WT/CTe/W/225). This view was echoed by Switzerland which has noted that discussions within the CTE may not be limited to voluntary schemes but should also include mandatory ones (See WT/CTE/W/219).The EU also notes that in some cases any type of environmental labeling scheme may not replace regulatory measures to achieve legitimate environmental objectives.

The EU stated in a revised strategy following the Cancun Ministerial Meeting in September 2003 that it wished to "maintain a high level of ambition to ensure that trade is supportive of sustainable development and the resolve to purse in the WTO the Johannesburg commitments. The commission is however, ready to show some flexibility in the means to reach these objectives." See EU Press Release DN: IP/03/1600 dated 26/11/2003 "EU – WTO: European Commission proposes to put Doha Round of trade talks back on track".

[xvi] The EU notes that such schemes should take into account international standards when being applied prepared and adopted and should reinforce principles in the TBT Code of Good Practice, and of transparency. See WT/CTE/W/225.

[xvii] Canada notes (G/TBT/W/174 and WT/CTE/W/38) that there is much to discuss on the topic, particularly with respect to the trade effects on PPM labeling. This is not limited in implications to only the environmental context, but also has impacts on agriculture and food trade issues. It favours ecolabeling schemes that are designed in a manner as to prevent discrimination and unnecessary obstacles or disguised restrictions on international trade.

Several industrialized countries, including the US, advocate the use of transparency as a means of dealing with the effects of eco labeling schemes, rather than clarification of WTO rules. See draft decision on Transparency in Eco Labeling programs, Non paper by US JOB no.4707, September 1996. Transparency is important in avoiding potential trade difficulties and has environmental benefits by increasing the legitimacy of such programmes. This would involve ensuring that ecolabeling schemes are notified such that members are aware of their existence, design, coverage and the selection criteria they utilize with a view to preventing them from causing undue barriers to trade.

[xviii] This includes action to:

- Enhance political commitment to achieve sustainable forest management by endorsing it as a priority on the international political agenda;

- Support the implementation of sustainable forest management at the national, regional and global level;

- Promote and facilitate the means to achieve sustainable timber harvesting, and to facilitate the provision of financial resources and the transfer of and development of environmentally sound technologies, and thereby address unsustainable timber harvesting practices.

More broadly, the WSSD Plan of Implementation also supports specific initiatives such as life cycle analysis, environmental awareness training programs, increased investments in cleaner production and eco-efficiency. Some of these include:

- Adopting monitoring and assessment mechanisms, including, where appropriate, life cycle analysis and national indicators for measuring progress;

- Improving the products and services provided, while reducing environmental and health impacts using where appropriate, science based approaches, such as life cycle analysis;

- Integrating the issue of production and consumption patterns into sustainable development policies, including into poverty reduction strategies.

See WSSD, Report of the WSSD Plan of Implementation, September 2002, Part IV, Articles 43 (a)-(i). The above positions build on the 1992 Rio Earth Summit which led to agreement on the Rio Forest Principles, a set of non binding principles for the management, conservation and sustainable development of all types of forests. There have in addition also been a number of international discussions which have sought to elaborate definitions of sustainable forest management (SFM) in the forestry sector such as the Helsinki Declaration. The Helsinki Declaration, the 1993 outcome of a series of Ministerial conferences on the Protection of Forests in Europe, in which European governments sought to develop guidelines for implementing the Rio Agreement's requirements relating to forests.

[xix] UNEP has undertaken research activities more broadly related to sustainable production and consumption under the auspices of the WSSD Plan of Implementation. These have included "life cycle initiatives" which bring together industry leaders, academics and policy makers to encourage the development and dissemination of practical tools for evaluating opportunities, risks and tradeoffs associated with products over their entire lives.UNEP also is focused on work to improve production processes; to accelerate innovation in product design; to promote science based, reliable tools for assessing the environmental impacts of product throughout their life cycles and to encourage "environmentally and socially sensitive" purchasing decisions by individuals, industries and public institutions. See Background Paper for the Ministerial Level Consultations, Governing Council of the United Nations Environment Programme, 31 December 2002 UNEP/GC.22/8/Add.2

[xx] UNCTAD has undertaken various capacity building and research activities to assist developing countries with trade and environment issues, including those related to standards and ecolabeling. Most of UNCTAD's activities have been concentrated in East and South East Asia. Some of these activities include a capacity building program for improved policy making and negotiation in key trade and

environment issues, a consultative task force on environmental requirements and international trade and a UNEP-UNCTAD Capacity Building Task Force for Trade, Environment and Development.

Several research studies were undertaken in the last decade on ecolabeling programs and their effects on trade. See UNCTAD Ecolabelling and market opportunities of environmentally friendly products (1994) TD/WG.6/2; UNCTAD Effects of Environmental Policies, Standards and Regulations on Market Access and Competitiveness, with Special Reference to Developing Countries, including the Least Developed among them, and in light of the UNCTAD empirical studies "Environmental policies, trade and competitiveness: conceptual and empirical issues TD/B/WG.6/6 1995 and also various UNCTAD/UNDP country case studies available from the UNCTAD Secretariat, 1995.

[xxi] The Plan of Action of the World Food Summit committed the FAO to assist developing countries on trade issues and, in particular, in preparing for multilateral trade negotiations including forestry, through studies, analysis and training.

[xxii] See OECD (2002) The Development Dimension of Trade and Environment; Case studies on Environmental Requirements and Market Access, Joint Working Party on Trade and Environment, Paris; OECD (1997) Eco-labelling: Actual Effects of Selected Programs, Paris; Early and Anderson, OECD Joint Working Party on Trade and Environment, Developing Country Access to Developed Country Markets under Selected Ecolabelling Programmes, December 2003; Vitalis, Vangelis OECD Round Table on Sustainable Development Private Voluntary Eco-labels: Trade Distorting, Discriminatory and Environmentally Disappointing, December 2002.

[xxiii] The International Institute for Sustainable Development (IISD) has undertaken capacity building activities on standards and sustainable trade with the support of the European Commission for DG Trade and the Norwegian Agency for Development Cooperation. [xxiii] See http://www.iisd.org 12/01/2004. This project is being implemented under the aegis of the Regional and International Networking Group (the RING). The World Wide Fund for Nature (WWF) founded and manages the FSC and has a long running campaign on trade and investment which encompasses the relationship between eco labels and WTO rules. WWF, UNEP and IISD have also collaborated together on capacity building activities on trade and environment, including on environmental standards. See IISD/UNEP (2000) Environment and Trade- A Handbook, UNEP, 2000. Friends of the Earth (FOE) has run a "rainforest campaign" since 1985 which proposed environmental certification for labeling of principally tropical timber. It has since developed its own labeling scheme. See http://www.foe.org , accessed 13/01/2004. Labeling Schemes of the Good Wood Seal of Approval.

Both FOE, FERN and Greenpeace are international members of the FSC.

[xxiv] A study by the OECD in 1997 of the market, trade and environmental effects of selected eco labeling programs in OECD countries did not reveal hard evidence of trade effects arising from eco labeling schemes but did note that they raised particular trade concerns when they used PPMS. It noted that PPM criteria could discriminate against imports where it reflected exclusively, the environmental conditions and preferences of the importing country, particularly for developing countries and countries heavily dependent on exports. Overall it found that potential trade effects were most marked where trade was affected, and where eco labels were applied to products that were mostly imported. According to some UNCTAD and UNDP studies, ecolabeling programs in increasingly address product categories of export interest to developing counties and tend to include PPM criteria. There is concern that some schemes, despite being aimed at environmental objectives, can discriminate against

foreign producers because of the way in which they operate, and can in effect act as a non tariff barrier to trade.

A report on the trade effects of eco labeling, published by ESACP considered the market access implications of eco labeling for exports of countries in the ESCAP region. The report revealed that the market access effects of eco labels varied significantly from country to country and from product to product. The study could not provide documented evidence that developing countries had been adversely affected by eco labeling, but did find that timber based exports of South East Asia had been particularly sensitive to eco labeling. Evidence suggested that at the time only a few exporters had obtained eco labels, which made empirical estimates of the costs of adjusting production processes difficult. The study also noted that eco labels could potentially create new export opportunities for environmentally friendly products.

[xxv] It covers products such as wood-based panels in the form of solid wood panels, plywood, particleboards (chipboards) either resin- or cement-bonded, and process fibre boards for use in construction. It is not applicable to wood-based panels intended for use in non-constructional applications.

[xxvi] The environmental, hygiene and health requirements of the Directive define results to be attained and hazards to be dealt with rather then technical specifications for doing so. Hazards to be dealt with include emission of toxic gases, radiation, and pollution of water or soil for example. Construction works must also be energy efficient in use having regard to the climatic conditions of the location and the intended use of the works. For each of these issues specifications are given for construction products and construction works which are environmental, mechanical and thermal by nature. Phases in the life cycle of a product other than the use phase, i.e. its excavation or production stages, during the building process, during demolition, waste disposal, incineration or waste reuse are not considered under the essential requirements. It is up to the Member States, with due observance of EU laws, to take into account the scope of the Directive and, when necessary, to prescribe requirements affecting construction products in order to limit the deterioration of the environment. There may thus be scope for the consideration of process and production methods at the national level, provided these are not inconsistent with the EU Directive. See European Commission "Starting points for harmonization: the CPD and its harmonized standards" at http://europa.eu.int accessed 25/02/2004.

[xxvii] According *Taiga Rescue Network - News update 2001-10-23 www.taigarescue.org/ ; Russian Forest Update No. 71-72 www.forests.org/recent/2001/ruforupd.htm/ WWF Russia October 2001* the Swiss Federal Council acknowledges the importance of certified timber and is now recommending public procurement of timber certified by internationally recognized certification bodies such as the FSC. The Swiss government hopes that the preferential use of certified timbers will curb the trade in illegal timbers and limit the need for more drastic measures such as import stops and other prohibitive actions.

[xxviii] Prior to Cancun, the EU had proposed FLEGT as part of a wider *EU Sustainable Trade Action* Plan. The plan noted a proposal to produce a paper for Cancun that offered zero duties for exports of furniture certified as being produced with timber from sustainably managed forests. The plan stated that "in the first instance, the commission will use FSC and equally qualified certification as qualifying as sustainably managed; subsequently, bilateral accords in the framework of FLEGT will extend zero duties to participating countries for the products in question". The plan was not adopted at Cancun. See Meeting on Sustainable Trade Action Plan, Wednesday 2 July, Centre Borschette, Agenda.

[xxix] The FLEGT paper describes as one main advantage for countries in participating in such an agreement that the legality mechanisms could be upgraded to support the tracking and verification of certified timber from sustainably managed forests. The systems for certifying legality should support sustainable forestry principles and enable tracking of timber in a chain of custody.

[xxx] This could be done by requiring that importers demonstrate compliance with standards such as through independent certification of chain of custody, or through legislation that prohibits the importation of timber which has been harvested in contravention of the laws of another state.