

Extended Producer Responsibility (EPR): an Alternative Solution to Regulate the International Electronic Waste Trade

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ABSTRACT

This dissertation examines the problems associated with the transboundary movement of electronic waste (e-waste), a term that refers to end-of-life or discarded electrical and electronic equipment. These problems occur mostly in developing countries where proper facilities and technology for environmentally sound management of e-waste are not sufficiently available. The Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and Their Disposal is the only existing international treaty governing the electronic waste trade. However, the Basel Convention, which employs the Prior Informed Consent (PIC) procedure as a control system, exempts electronic assemblies destined for direct reuse, repair, refurbishment, or upgrading from its scope because trade in electronic materials for these stated purposes are not considered waste in some countries. This exception, although intended to protect and increase trade in second-hand products, also creates a loophole for illegal dumping, especially in developing countries where there is a high demand for these low-cost second-hand electronic products and materials.

Extended Producer Responsibility (EPR) is an alternative approach invented and used in many European and other developed countries to ensure a proper and effective ewaste management. EPR refers to the Polluter-Pays principle. In the case of electronic products, producers are deemed pollution generators because of their ability to change product design and control the substances used. EPR, therefore, extends the producers' responsibility beyond the factory to the waste management stage when the products reach the end of their useful life. **This dissertation explores and assesses the EPR approach as an alternative solution to the potential setbacks that have resulted from the Basel Convention's exception and considers the possibility of adopting EPR as a standard policy principle on a national level.**

(pp. 2-3)

...2. Possible Trade-Barriers

The application of EPR into each nation's legislation is based on different factors, such as the legal system (Common Law or Civil Law), the scope of products concerned (broad or narrow scope), the purposes intended to achieve (minimization of waste, minimization of hazardous substances used, recycling rate target, etc.), and the stage for which the responsibility of producers are extended.

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As a result, the policy principles cannot be established uniformly by all countries. This could be a potential burden for manufacturers to comply with the various rules. A manufacturer would be compelled to create products for different markets at a great expense.

With regard to trade in goods, many countries who are members of the World Trade Organization (WTO),⁵²⁰ may argue that EPR legislation is a technical barrier to free trade contrary to the WTO rules under General Agreement on Tariffs and Trade (GATT) and the Technical Barriers to Trade (TBT) Agreement. The WTO system recognized that technical standards and regulations are important and vary among countries.
(p. 198)

However, the TBT agreement provides standards and procedures to ensure that these regulations do not arbitrarily set or unnecessary create obstacle to international trade.⁵²¹
(pp. 198-199)

For example, **the European Union Directive** intends to provide more incentive for manufacturers for the improvement of their products design as well as the prevention of hazardous substances in their electronic products by **restricting the maximum amount of certain hazardous substances used in each product category. This restriction has a direct impact on manufacturers and the production process since producers are responsible to find substitutes for these substances by certain deadline. While the underlying objective of this policy receives a lot of support, many countries express concerns that such restriction does not take into account the different level of technological advancement among countries and the targeted risk assessment on the substitution and elimination of certain substances has not been carried out properly.**⁵²²

⁵²¹ World Trade Organization, *WTO Rules and Environmental Policies: Introduction*, available at http://www.wto.org/english/tratop_e/envir_e/envt_rules_intro_e.htm (last visited September 22, 2010).

⁵²² LAWRENCE A. KOGAN, LOOKING BEHIND THE CURTAIN: THE GROWTH OF TRADE BARRIERS THAT IGNORE SOUND SCIENCE 69, (National Foreign Trade Council Inc. 2003)
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