Chapter 4

Standards

Key contents of the chapter:

1. Standards can help to promote exports of green goods by making visible the social and environmental benefits associated with their production and appealing to certain consumers, by realising untapped comparative advantages and triggering learning processes, and by increasing scale and access to finance. Standards can also serve to promote green industries in a coordinated manner across countries by reflecting the negative externalities of brown sectors, whether domestic or foreign, through export or import policies.

2. Standards can take different forms depending on their nature (binding or non-binding), their source (public, private, mixed), their target and contents (either the product, the production process or both, from different perspectives, e.g. environmental, social, etc.), and their governance (specifically their method of assessment, e.g. public authorities, third-parties, producer-assessed, and the consequences, e.g. commercialisation, disclosures, etc.). They can be used from the perspective of exporters (to increase the competitiveness of certain products) or importers (to control the quality of imported products and make sure domestic and other foreign producers are not disadvantaged by products developed with lower standards).

3. Major illustrations to be considered include the experience of South Africa in using standards to boost green exports, as well as those of the United States and India, where a variety of measures have been used to regulate imports, and these measures have been challenged as inconsistent with international trade rules.

4. A summary table placing the tools reviewed in this chapter within the overall methodology presented in Chapter 1 is provided at the end of the chapter.
1. Overview

An increasing number of States are using a variety of standards, broadly understood, to promote trade in sustainably sourced fishery, forestry and agricultural products, manufactured products as well as sustainable tourism. The nature of standards ranges from specific regulations to privately developed labels on products. Their content and operation varies significantly depending on factors such as the values these standards aim to reflect (agricultural or fisheries products that are organically produced, fair conditions of labour and trade, extraction of forestry products with low environmental impact, tourism that is respectful of ecosystems, etc.) or the method used to certify adherence to such standards (government-certified, private third-party certified, self-assessed), among others.

From a green industrial policy perspective, such standards are usually employed to reflect the negative externalities, particularly social and environmental, of different production processes, products and activities (e.g. services) or, seen from another perspective, to compensate for the positive externalities of some products and activities. Thus, the use of standards has a corrective rationale. Products or activities that are not standard-compliant may be banned (e.g. by a food safety regulation) or may face a lower demand, as it is easier for consumers to identify their negative impacts. At the same time, standards may serve to realise a latent – currently untapped – comparative advantage or to trigger learning processes. For example, as discussed in Chapter 3, some developing country producers may be producing sustainable agriculture by default, which could help them to shift to, for example, certified organic agriculture more easily. However, understanding the requirements of standards used in different export markets can be complex. Thus, technical and financial assistance may be needed for their farmers to produce in a way that complies with a given sustainability standard used in importing countries, in order to expand their exports to such markets (see Box 4 below for a concrete example). Moreover, this type of support can trigger a wider learning process as other producers join the approach due to the significant price premiums...
enjoyed by, for example, organic or Fairtrade agricultural exports. The same logic applies to other sectors, such as fisheries, forestry and tourism. Finally, access to international markets can serve as a basis for increasing the **volume of production** as well as to improve **access to finance**. From the perspective of a **coordinated (rather than country-focused) green industrial policy**, the use of standards in both exporting and importing countries can result in a general advantage given to sustainably-sourced or produced goods, and hence to a general incentive for industries across countries to adopt more sustainable production processes and methods. Box 1 summarises the policy rationales for the use of standards as a trade-related green industrial policy tool.

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**Box 1: Boosting green industries through standards**

- Promotion of green industries – and exports – by reflecting their positive social and environmental externalities to gain admission in foreign markets and appeal to certain categories of consumers.
- Promotion of green industries by ensuring that the negative externalities of harmful competing products are explicit and, as the case may be, by banning such products from certain markets (coordinated green industrial policy)
- Promotion of green industries – and exports – by realizing latent comparative advantages in certain countries that can more easily switch to competitive products (e.g. organic agricultural or fisheries products) and by triggering fast learning processes.
- Promotion of green industries – and exports – by streamlining access to international markets and thereby increasing scale and access to finance.

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The next section of the chapter discusses the spectrum of standards used in practice, focusing on their nature, content, certification processes, related support schemes, and the implications of their use for exporting and importing countries (section 2). The chapter then provides some representative illustrations of the main varieties of this tool (section 3). Section 4 summarises the chapter and places this tool within the methodology presented in Chapter 1.
2. **The tool-box**

2.1. **Spectrum of measures used in practice**

**Main components**

Broadly understood, the term ‘standards’ refers to a variety of statements (whether of binding or non-binding nature) from either public authorities or private entities setting certain minimum expectations relating to the composition and operation of products or their production processes and methods. This broad definition points to the main components of standards that governments have to take into account when using them, namely:

- Their nature
- Their source
- Their target and content
- Their governance

Table 1 summarises the four components of standards and their design options.

<table>
<thead>
<tr>
<th>Components</th>
<th>Design options</th>
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<tbody>
<tr>
<td><strong>Nature</strong></td>
<td>Binding</td>
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<tr>
<td></td>
<td>Voluntary (different degrees of authority)</td>
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<tr>
<td><strong>Source</strong></td>
<td>Public</td>
</tr>
<tr>
<td></td>
<td>Mixed (e.g. officially endorsed or jointly developed)</td>
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<tr>
<td></td>
<td>Private</td>
</tr>
<tr>
<td><strong>Target and content</strong></td>
<td>Product (defining characteristics / informational)</td>
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<td></td>
<td>Production process (defining impact / informational)</td>
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<td></td>
<td>Both (defining characteristics and impact / informational)</td>
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<tr>
<td><strong>Governance</strong></td>
<td>Assessment (public/third-party/self-assessed)</td>
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<tr>
<td></td>
<td>Consequences (production/access/cost/litigation exposure/informational)</td>
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Variations in these components are important not only for understanding how different instruments operate but also with respect to their legal treatment under international trade law. This section discusses each component. Section 2.2 addresses the use of standards by exporting countries or other entities to promote exports from green industries. Section 2.3 then turns to the perspective of the importing country and purchasers based in end markets.

Nature of standards

The nature of standards affects their operation as a green industrial policy tool. Binding standards enacted through laws or regulations (sometimes called ‘technical regulations’) impose requirements on the composition, structure or operation of a product (e.g. agricultural products or toys or car parts or electronic equipment) or on its production processes and methods (e.g. produced respecting certain labour norms or with a low footprint on the environment or using certain desirable techniques). These requirements will determine whether a domestic or an international producer can commercialise its products in the regulating country or not and under what conditions (e.g. disclosure and commercialisation requirements).

Standards, in the broad meaning in which this chapter refers to them, may be binding or voluntary. Standards that are not formally binding may nevertheless command great authority in practice either because they significantly facilitate certain regulatory procedures if met (e.g. permits) or because they are widely recognised by large-scale purchasers (e.g. industries that buy them as inputs or distributors such as supermarkets) or consumers (e.g. Fairtrade or organic labels).

Source of the standard

The source of the standard is related to its nature. Whereas a standard cannot be binding unless it is issued or endorsed by a public authority, non-binding standards can be adopted by a wide variety of organisations, including State authorities, but also international organisations, non-governmental organisations or the private sector. Box 2 briefly introduces one of the major standard-setting private organisations, the International Standardisation Organisation (ISO), and its work on one widely used environmental standard.
The ISO has developed a series or ‘family’ of environmental standards that are increasingly sought after by companies sourcing products abroad. The ISO 14000 family of standards has been very successful and widely adopted. There are currently over 300,000 companies in 171 countries with ISO 14001 certified environmental management standards, which reflects a significant increase in recent years. As of 2009, over 50 per cent of ISO 14001 companies were based in East Asia compared to 40 per cent in Europe and only three per cent in North America. For companies in developing countries, ISO 14001 certification can be an important way to demonstrate environmental responsibility and thereby increase export opportunities. An empirical study by the OECD found that the adherence to international standards in most cases leads to a positive effect on export performance for the respective country.

The wide range of possible standard-setting organisations has led to a multiplication of standards (several hundred of them exist just for environmental matters) with the resulting challenge of selecting one or the other standard from a production or purchase perspective. At the same time, private standards may be useful as a civil society discipline imposed on both States and the private sector when it is difficult to officially regulate certain industries for political or economic reasons. This is particularly relevant for the promotion of green industries, which can rely on non-binding standards to showcase the environmental and social advantages of their products and their production processes (e.g. organic agriculture has a much lower environmental footprint as well as an advantage in terms of human health due to its non-reliance on pesticides and agrochemicals).

Target and content of standards

The target and contents vary across standards, depending on their intended purpose. Generally speaking, standards may seek to govern the **product itself** and/or the **process to produce it**. Standards governing the product characteristics are aimed at limiting the health or environmental hazards of a product. They can relate to features as diverse as chemical residues in food products, energy consumption by electronic devices, emissions of air pollutants in cars or car parts, the biodegradable nature of a product, and many others. Standards governing the production processes and methods may target elements that are present or related to the product itself or to elements that are totally absent from it. Box 3 briefly discusses the standards administered by the Forest Stewardship Council (FSC), which relate to sustainability of the processes through which wood products are sourced.
For both product and process characteristics, the use of standards can introduce a certain degree of discipline in industrial production in a way that requires or incentivises the industry to apply greener processes and business models (e.g. extension of the social and environmental responsibility of the producer to waste and recycling) or even to turn to new lines of production (e.g. a variety of green products).

**Box 3: Premium prices for Forest Stewardship Council-certified wood and products**

Processors, traders and businesses can benefit from enhanced market access and higher prices for certified wood and products. Depending on the operation, price premiums for FSC-wood, particularly from the tropics, range from 15 to 25 per cent. For example, FSC-certified sawn hardwood exported to the UK by Malaysia’s KPKKT (a timber management company) can fetch 30 per cent more than non-FSC certified products. The practice of reduced impact logging at site – a form of sustainable forest management advocated by the FSC – also saves money for forest owners, as they do not have to repair damage done to the forest from conventional logging.

**Source:** UN Environment (2013).

The specific objectives pursued by a standard (e.g. social and distributional considerations, reduction of the environmental footprint, protection of plant, animal and human health) may be relevant from a legal perspective in the context of international trade rules, as discussed in section 2.3. The information about the product or the process, when the product is placed on the market, can be conveyed in a way so as to highlight the environmental/social positive externalities of the product (hence to compensate in some way for them by the higher appeal to consumers), to warn about negative externalities or potential dangers (e.g. warning labels in hazardous chemicals and pesticides) or in a neutral manner (as food composition label) (Czarnezi/Polians/Main (2017)).

**Governance of standards**

The governance of standards will normally be part of a broader set of institutional arrangements and their performance will highly depend upon them. In recent years, there have been efforts to situate such governance within the wider ‘quality infrastructure system’ which relies on institutions, regulations (including standards) as well as on market and consumer feedback to ensure that products are fit for purpose. In other words, that products are of sufficient quality for their intended purpose (e.g. education and training that is useful for the needs of an industry in the green industrial sector see UNIDO, *Quality Infrastructure. Building Trust for Trade* (2015) and Chapter 7). Within this broader framework, the governance of standards can be seen both as part of the institutions governing the standard and as a service, i.e. the assessment of conformity.
Conformity assessment involves a variety of processes followed to check whether a product, a service, a work, an organisation or its personnel meet certain quality standards. It can take several forms, from inspection and/or testing by public officials, to third-party assessment by independent third-parties (in some cases officially accredited), to producer self-assessment (see ISO/UNIDO, Building Trust. The Conformity Assessment Tool-Box (2010) and section 2.3 below relating to the conformity assessment agreements signed by the EU). The selection of a specific type of conformity assessment process may have significant implications not only for the credibility of the assessment but also from a legal standpoint, because the legal instruments on which different conformity assessment processes are based (e.g. consumer protection law, administrative law, or international trade law) are themselves different and rely on different agencies and tools for their deployment.

The consequences may range from a simple ban of production or commercialisation, including prohibition to access certain markets, to fines and penalties (in case of non-conformity), to product liability frameworks, and informational and packaging requirements (e.g. the provision of certain information or the addition of warnings). From the perspective of green industrial policy and, more specifically, of trade-related instruments, the governance of standards is important to ensure the credibility of the standard and hence of the compliant products or, in other words, to avoid so-called ‘green-washing’. Only genuine sustainably certified products must enjoy the competitive advantage arising from the standard in both the domestic and international markets. At the same time, to the extent that standard administration affects market access, it may also operate as a technical (non-tariff and non-quantitative) barrier to trade and it is therefore subject to detailed trade disciplines discussed in section 2.3.
2.2. The use of standards to promote exports

Overview

Making use of standards to develop, consolidate and promote green industries is becoming widespread, particularly for agricultural, fisheries and forestry products, manufacturing, and tourism. Standards can channel interest and investment into some trade-related opportunities (e.g. sustainable agricultural products, responsibly-sourced forestry products, more efficient equipment, tourist facilities with a lower environmental footprint), especially in sectors where some countries have untapped comparative advantages due to the climate, the availability of land, and the current production practices. Standards can also help to adequately reflect both the desirable characteristics of a product and the positive externalities of its production, thus appealing to environmentally- and socially-conscious consumers. Such positive externalities can be reflected in a price premium, a more stable international demand, and a better redistribution of the profit (with more going to the small farmers or producers, and less captured by intermediaries).

However, as there are hundreds of environmental standards and their requirements and potential are not always easy to assess, some form of support from governments, development agencies, multilateral agencies or other partnerships (including the private sector) is very important. Such support has to tackle sector identification needs (e.g. data gathering to be able to focus on those industries where there is untapped potential), training needs (both for production practices and for standard adherence), financial needs (to cover, for example, the certification fees and initial investment required to shift from conventional production practices), coordination challenges (ranging from coordinating small producers among themselves and with suitable larger companies, to providing appropriate marketing for international markets, to accessing such markets, and redistributing a sufficient share of the profits back to the small producers).
Use of standards in the primary sector: Sustainable agriculture

In the primary sector, many examples of policies and transnational initiatives can be given. One interesting example, discussed in Box 4 is a transnational initiative for the export of organic tea from Nepal to international markets. Most of Nepalese tea is sold to India and it is then exported to international markets as India Darjeeling tea. In an effort to reach international markets directly, a partnership was formed in 2007 between over a hundred local farmers, a private Nepalese tea company, the German Development Agency and a German private company for the production and direct exportation of organic Nepalese tea.

Another example discussed in Box 6 in Chapter 3 is provided by the policies in Ecuador to promote its exports of organic cocoa and sustainable fish products. In its 2015 National Export Strategy for Sustainable and Green Products, Ecuador identified cocoa-chocolate and fisheries as socio-economic priority sectors and set out an action plan to make these sectors more competitive and socially and environmentally sustainable. The action plan calls for the adoption of voluntary sustainability standards in the fisheries sector and the certification of its entire cacao and chocolate production according to environmental and social sustainability standards.

Box 4: Exports of Nepalese organic tea

The partnership brought together over a hundred small tea farmer groups of the Sunderpaani Tea Cooperative in Eastern Nepal, the local tea company, the German Development Agency and a German private sector partner. The farmers and the tea company received training and equipment to conduct organic agricultural practices, organic standards and certification, management and monitoring software (for the tea company to track the quality of the tea through the production process). Some 100 farmers were trained to be able to train other farmers in turn (training the trainers). The tea thus produced was commercialised through the German private sector partner directly to international markets as organic Nepalese tea ‘Spirit of the Sunderpaani’. The transaction was not only socially and environmentally positive but also economically profitable for farmers, who spent less on chemical inputs and received twice as much money per kilogram of green tea leaves compared to the national average for conventional green tea leaves. This shows the types of benefits - social, environmental, and economic - that can be derived from this type of support. The key is the identification of a sector where there is untapped potential and where initial support can result in further and exponential development. The approach of training the trainers and the economic advantages attracted in turn many more farmers interested in switching to organic production.

Source: GIZ/Inclusive Development of the Economy Programme (2012)
Opportunities in organic agriculture are just one illustration of the broader opportunities that arise from sustainable agriculture, which also include more efficient agricultural methods (e.g. with less carbon-intensive or water-intensive irrigation systems), fair-trade labelled agricultural products, and many others.

Use of standards in the secondary sector: Green manufacturing

In the secondary sector, green manufacturing, broadly understood as manufacturing processes that reduce the amount of natural resources and energy required for a finished product as well as the externalities associated with waste and pollution, can be certified with significant advantages for market access and product competitiveness. For example, certification of compliance with the ISO 14001 (Environmental Management System) standard discussed in Box 2 can increase market access opportunities. This is why the Egyptian Ministry of Trade and Industry has supported companies that wish to be certified as complying with the ISO 14001 standard paying up to 85 per cent of the consultancy and certification costs. Green manufacturing is further discussed in Chapter 5.

Use of standards in the tertiary sector: Sustainable tourism

Standards can also be used for the tertiary (services) sector. Services offered to foreign tourists can be understood as a form of trade to the extent that tourists exchange foreign currency (converted into local currency) for services provided to them. The selection of such services is sometimes driven by appropriate certification of touristic facilities (e.g. hotels or lodges) as socially and/or environmentally responsible. One particularly noteworthy advantage of tourism is its spillover effect promoting the development of other sectors such as energy, telecommunications, protection of environmental and cultural sites, and the like. Box 5 briefly refers to a private standard used to certify the energy and resource efficiency of hotels and resorts in Asian countries.
One exemplary initiative that helps promote sustainable tourism is the Leadership in Energy and Environmental Design (LEED) certification programme. LEED certifies that a building is designed and constructed with the goal of achieving high performance in key areas of human and environmental health, based on indicators such as water savings, energy efficiency, materials selection and indoor environmental quality. LEED provides a point-based system across several relevant areas. Based upon the number of points achieved, a project receives the LEED rating levels Certified, Silver, Gold or Platinum. The LEED is administered by the Green Building Certification Inc (GBCI), which guarantees independent, third party review and verification of registered projects to determine if they have met the standards set forth by the LEED rating system. LEED certification can be adapted to different types of buildings, from homes, to hotels, to corporate headquarters, and be conducted at all phases of development. Therefore, LEED may certify building design, interior design and construction, as well as building operations and maintenance. LEED furthermore certifies sustainable neighborhood development projects. LEED is the most widely used third-party verification for green buildings, with around 2.2 million square feet being certified daily.

Source: http://leed.usgbc.org/

2.3. The use of standards to regulate imports

Overview

Standards, in the broad meaning used in this chapter, which encompasses regulatory measures as well as private standards and initiatives, can be a tool of green industrial policy by importing countries. Green infant industries can be protected through a variety of measures, which include tariff and non-tariff barriers. Among the latter, certain categories of measures that can be called technical barriers to trade specifically address the characteristics, composition, safety, production process, packaging and labelling of traded products. Within this type of measures, a sub-category specifically focuses on the protection of plant, animal and human health. They are called sanitary and phytosanitary measures.

Given the trade restrictive potential of technical barriers to trade, including sanitary and phytosanitary measures, they are specifically regulated at the WTO level by the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS). These two agreements aim to balance the need to adopt this type of measure, which constitutes legitimate regulatory action, with the need to avoid their misuse for protectionist purposes. The protection of green industries, whether to promote their development or to correct distortions (i.e. when the harmful effects of a product are left unaddressed) sits somewhere in the middle of these two opposite sides of the spectrum. Hence, the legality of such
measures must be assessed in the light of the specific design features and context of each measure. This said, one important avenue through which consistency can be achieved is by adherence to international standards harmonising the requirements imposed on imported products. Thus, the adoption of such international standards can be seen as another example (see also the discussion in Chapter 2 of an environmental goods agreement) of a coordinated green industrial policy, whereby many States decide to raise the bar for product characteristics and processes so as to reflect their desirable environmental and social implications. The present section discusses the types of measures that can be adopted by States to regulate imports in order to promote green industries and then turns to the legal space under international trade rules left for unilateral technical barriers to trade (including sanitary and phytosanitary measures) as well as for measures that are based on international standards.

Varieties of technical barriers to trade

The use of policy measures that are legally considered technical barriers to trade (including sanitary and phytosanitary measures) is widespread in practice. The US Office of the Trade Representative prepares an annual report on foreign barriers to trade (of US products and services) and records, among others, the adoption of these types of measures country-by-country. We have discussed components and design of technical barriers to trade in section 2.1. It may be useful to identify some recurrent types of measures (USTR (2013)).

Food safety regulations as well as non-binding standards are recurrent. By way of illustration, nutritional labelling and advertising is generally subject to either mandatory regulations (e.g. in Chile or Thailand) or voluntary standards (e.g. Korea) and it can adopt different formats (e.g. front-of-package labels, of a certain size, using a ‘stop light’ format to better convey the message).

Another measure frequently used by the EU is resort to Agreements on Conformity Assessment and Acceptance with trading partners on a variety of goods ranging from machinery and electrical products, to toys, medical appliances or pharmaceuticals. Under these agreements, the trading partner agrees to adhere to EU technical standards and regulations in exchange for facilitated conformity assessment in the EU for some categories of products. States may also resort to voluntary standards that, in practice, condition the viability of commercialising a product in a given market. Box 6 briefly discusses the case of solar panel certification in Korea.
Korea’s Energy Management Corporation (KEMCO) only certifies one type of thin film solar panel, which is manufactured by Korean producers, as meeting its version of the International Electrotechnical Commission standard. While compliance with that standard is not technically required for sale of solar panels in the Korean market, a company will not be commercially viable in Korea without KEMCO certification. As a result, foreign solar panel producers that make different kinds of thin film panels will find themselves unable to compete in the Korean market.


**Regulation of Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures in international trade law**

Standards adopted by countries are highly regulated in international trade law. The TBT and SPS agreements impose some disciplines on governments when adopting such standards as well as when regulating standard-adopting constituencies (local governments and non-governmental agencies). Generally speaking, the system of these two treaties is based on three components:

- The first inquiry is whether the measure in question falls within the scope of the relevant agreement;
- If that is the case, then a number of disciplines have to be complied with; and
- Compliance is facilitated (presumed) if the measure reflects international standards.

Generally, measures that qualify as technical barriers to trade are regulated by the TBT Agreement. A measure is defined as a technical barrier to trade and therefore falls under the TBT Agreement if it qualifies as a ‘technical regulation’, a ‘standard’ or a ‘conformity assessment’ procedure, as defined by the Agreement. If this is the case, then a number of obligations apply, including: non-discrimination (most-favoured-nation clause and national treatment clause); proportionality (generally referred to as ‘necessity’ because it requires that the measure is not more trade restrictive than necessary to fulfil a legitimate objective); and transparency (including advance notification, some measure of participation by affected trading partners, and reasonable interval in the introduction of the measure). As discussed in the next paragraph, meeting international standards is important for the assessment of whether the measure is necessary or proportionate to the objective pursued.
Within the broad category of technical barriers to trade, some measures have a specific purpose of protecting **human, animal and plant life and health** against risks in food, feed, pests or disease. These measures are governed by the SPS Agreement. The system is similar to the TBT Agreement. If the measure qualifies as an SPS measure (in other words: if it falls under the definition of a SPS measure under the Agreement), then it must meet certain requirements, namely that the measure is science-based (with a narrow exception for the adoption of precautionary measures), it is non-discriminatory (the test here does not concern competing products as the case in the GATT but rather the absence of discrimination between States party to the Agreement, that have similar conditions, in terms of risk or exposure to substances that may have a sanitary or phytosanitary impact), and it is transparently adopted and implemented (which includes obligations of notification and consultation, as well as obligations of reasonableness in the processes to assess compliance with the measures). Again, consistency with international standards facilitates the assessment of consistency of the measure with international trade rules.

Consistency with **international standards** is therefore important for the development and adoption of the measures discussed in this chapter. Under the TBT Agreement, international standards are those adopted by bodies whose activities in standardisation are widely recognised and whose membership is open on a non-discriminatory basis to all WTO Members, even if the standard has not been adopted by consensus. If an existing or forthcoming international standard is 'used as a basis' of the measure at stake, and this measure is an effective and appropriate means to fulfil a legitimate objective, then there is a rebuttable presumption that the measure does not constitute an unnecessary obstacle to trade. A similar test for international standards is applied in the context of the SPS Agreement, which specifically refers to the Codex Alimentarius Commission, the World Organization for Animal Health, and the Secretariat of the International Plant Protection Convention. The measure adopted by States may rely on such standards in different ways (it may be 'based on' the standard, it may 'conform to' it, or it may impose a higher level of protection than the standard). If the State's measure conforms to the international standard, then there is a rebuttable presumption of consistency with both the SPS Agreement and the General Agreement on
Tariffs and Trade (GATT). In practice, the assessment of the standard as well as of the relation between the measure and the standard are complex matters both under the TBT Agreement and the SPS Agreement. Representative examples are provided in section 3.2 below.
3. Case-studies

3.1. Green export policy in the making: the case of South Africa

South Africa has a diverse agricultural sector that includes field crops, horticulture, animal production, dairy farming, fish farming, game farming and agro-processing. While the share of organic agricultural production is currently small (0.04 percent as of 2013) and local demand limited, developing organic agricultural exports could be a major driver for South Africa’s green economy, supporting social development while safeguarding natural resources. As of December 2016, South Africa did not have a government regulation or standard for organic products in place (although it subsequently established one). Also, it is difficult to identify organic products with high export potential as neither government nor industry collect data on organic products and most available information from international organic certification bodies is based on estimates only and on ‘demand’ rather than supply. While these factors demonstrate some of the existing challenges, they also illustrate the untapped potential of organic agriculture in the country.

In this context, UN Environment was requested to analyse South Africa’s potential for organic agriculture. The results of the analysis were published in its Green Economy and Trade Opportunities Project (GE-TOP) South Africa country study (2016). The report identified a number of products that, if suitably certified, bear major organic trade opportunities. These include rooibos tea, honeybush, grape wine, table grapes, apples, pears, citrus, etc. For South Africa to be able to make use of these trade opportunities, the study recommends several initiatives, e.g. the establishment of a national organic regulation or standards (which South Africa did in 2017), specific data gathering on the organic market and the development of information, training and capacity-building schemes to facilitate conversion of non-organic farming systems. Furthermore, the report recommends the establishment of Organic Agricultural Development Zones, and the provision of financial incentives and support for compliance with foreign food safety and sanitary/phytosanitary regulation as well as for suitable certification.

To support the export potential for South Africa’s organic agricultural products, the report recommends facilitating trade through international agreements. To do so, South Africa may build upon its pre-eminent position in Africa and promote organic agriculture exports through regional economic integration schemes. Also, South Africa could consider trade facilitation/preferential agreements with major markets for organic agricultural products, notably the EU.
3.2. Green standards under the TBT and SPS Agreements

In the cases US – COOL (2012) and US – Tuna-Dolphin II (2012), the WTO Appellate Body found that the US measures challenged (labelling requirements) violated the non-discrimination discipline in Article 2.1 of the TBT Agreement. US – Tuna-Dolphin II (2012) concerned labelling requirements (the DPCIA dolphin-safe label) relating to the process through which tuna was caught, which could only carry the dolphin-safe label in the US markets if certain conditions on the catch-area, type of vessel and fishing method were met. Mexico challenged the measure, which it characterised as a technical regulation in the meaning of Article 2.1 of the TBT Agreement. The US contended instead that the measure in question was voluntary and was therefore not to be considered a technical regulation. The Appellate Body sided with Mexico. It considered that while the label was not a requirement for the sale of tuna in the US, “the US measure establishes a single and legally mandated set of requirements to the exclusion of other dolphin-safe labels. It was therefore to be considered a technical regulation under the TBT Agreement. In US – COOL (2012), Canada challenged US labelling measures requiring that consumers at the retail level be informed of the country of origin of certain commodities (beef and pork) and that, in order for the US to be considered the country of origin, the animals must be exclusively born, raised and slaughtered in the US. The Appellate Body confirmed the finding of the panel according to which the measure amounted to de facto discrimination between domestic and foreign cattle in violation of Article 2.1 of the TBT Agreement. In both cases, the Appellate Body clarified that labelling measures incentivizing private action to the detriment of a foreign product as compared to a domestic one can constitute de facto discrimination in violation of the TBT Agreement.

A variety of standards, broadly understood, may be also governed by the SPS Agreement when they concern human, plant and animal health. In India – Agricultural Products (2015), the WTO Dispute Settlement Body assessed measures adopted by India banning the import of certain agricultural products due to alleged concerns over the spread of avian influenza (AI), otherwise known as bird/avian flu. In its ruling, the Appellate Body agreed with the panel’s finding that measures that are not adopted on the basis of a risk assessment are presumed to be in violation of Article 2.2 of the SPS Agreement. However, it reversed in part the panel’s finding that this

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10 Appellate Body Report, US Tuna II, at paragraph 193
provision had been violated. Indeed, the Appellate Body considered that the panel had failed to take into account the evidence relied on by India to rebut the presumption of inconsistency. However, the Appellate Body confirmed the panel’s finding that India’s measures violated Article 6 of the SPS Agreement because they required the prohibition of all imports from countries that had notified cases of AI, thereby including in the prohibition also AI-free areas within those countries. The Appellate Body also confirmed the panel’s finding that India’s measures were significantly more trade-restrictive than necessary to achieve India’s level of protection against AI, and therefore that they were in violation of Article 5.6 of the SPS Agreement.
## Summary table

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| Stock-taking | Gathering information of socio-economic, environmental and existing policies to define a baseline, particularly as regards the following enabling conditions for trade-related green industrial policies:  
• Appropriate resource endowment and political/social conditions  
• Public investment and access to credit  
• Adequate infrastructure  
• Domestic legal and regulatory framework  
• Integration into international agreements |
| Prioritising intervention areas and goal-setting | Identifying policy rationales to be acted upon and sustainability goals to be reached. Policy rationales may include:  
• Promoting green industries and exports by reflecting their positive externalities and thereby making them more appealing to international markets  
• Promoting green industries by accounting for the negative externalities of competing domestic and foreign products  
• Unleashing latent comparative advantages and learning processes  
• Promoting green industries and exports by streamlining access to international markets and thereby increasing scale and access to finance |
| Selecting the tools | Matching selected policy rationales with policy options. Policy options within the broad category of standards may include:  
• Technical regulations  
• Voluntary standards  
• Conformity assessment systems |
| Design and assessment | Specific design of policy option. Selection within each variety of the tool of specific design features:  
• Nature (binding vs non-binding)  
• Source (public, private, mixed)  
• Target (products, production processes, or a combination)  
• Content (environmental, social, etc.)  
• Assessment method (government, private third-parties, self-assessed)  
• Consequences (possibility of commercialisation vs simple disclosure)  
Assessment of consistency and impact:  
• Legal assessment  
• Integrated socio-economic and environmental impact assessment |
| Implementation | UNIDO Practitioner’s Guide for Strategic Green Industrial Policy – Phase 6 |
Resources

NB: all links last visited on 15 September 2017

- UN Environment, Trade and Green Economy. Trade in Certified Organic Agriculture – Challenges and Opportunities for South Africa (2016).