

**The regulation of eco-labelling in South Africa: A
comparative analysis.**

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1 Introduction

The *Constitution of the Republic of South Africa*, 1996 (hereafter the Constitution) and the *National Environmental Management Act 107 of 1998* (hereafter NEMA) provide for development and protection of the environment that should promote sustainable development.¹ Sustainable development is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.² The South African government has a responsibility to establish structures and adopt integrated laws and policies that promote sustainable development.³ Government alone may however not manage to provide the solutions needed for environmental sustainable development. Therefore all stakeholders, including the public and industry, are needed to achieve sustainable development.⁴

Eco-labelling may serve as a tool to further sustainable development, as it can be employed by industry in conjunction with government and the public to promote environmental protection and facilitate sound economic product development. When the latter draft a framework to achieve sustainable development, they may employ eco-labelling as an instrument. An eco-label is a voluntary trademark awarded to products deemed to be less harmful to the environment than other products within the same product category.⁵ It is considered an attractive policy measure because of its market-driven approach to achieve environmental goals.⁶ Hence eco-labelling, *inter alia*, strives not to harm economic growth and social welfare whilst, at the same

1 Section 24 of the Constitution and section 2 of NEMA.

2 In this dissertation use is made mainly of internet sources as there is not much other primary source material available relating to eco-labelling. Anonymous 2004 HYPERLINK <http://www.sdgateway.net/introsd/definitions.htm> [Date of use 24 Aug 2004] and Our Common Future (1987) UN General Assembly Res 4221186 11 Dec 1987 (Brundtland Report).

3 Section 24(b) of the Constitution states that everyone has the right to have the environment protected by reasonable legislative and other measures.

4 Bray 1998 *South African Journal on Environmental law Policies* 13.

5 Anonymous 2001 HYPERLINK <http://www.aela.org.au/Ecolabellingresources.htm> [Date of use 12 Aug 2004].

6 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/introduction.html [Date of use 12 Aug 2004]. Reasonable legislative and other measures should be used to obtain these environmental goals.

time, providing for solutions to protect the environment. This may arguably correlate with the essence of sustainable development. It is argued that eco-labelling may open up a whole new market for the South African producer, and may additionally promote production of environmental friendly products. Currently South Africa does not have an accredited eco-label of its own. However there has been great success with the Proudly South African label initiative⁷, which although not an eco-label, may be developed to include this function. It is also questioned whether South Africa has an established legal framework by which domestic regulation of eco-labelling can be facilitated.

This dissertation accordingly aims to determine the possibility of implementing eco-labelling in South Africa as a tool to achieve sustainable development. This will firstly entail a comparative study of the European legal regime which regulates eco-labelling. The European Union eco-label was established in 1992 and has developed and changed throughout the years.⁸ It is prudent to consider the experience gained by the European Union (hereafter the EU) in establishing, developing and implementing eco-labels. The EU eco-labelling program was chosen for this study because the EU has, as will be discussed in paragraph 3, a well developed structure in determining criteria for eco-labels, the necessary legislative instruments and institutions to develop a successful eco-label.

Secondly this dissertation will analyse whether there is a possibility of implementing eco-labelling in South Africa to further sustainable development by analysing relevant domestic legislation, white papers, policy measures and the Proudly South African label, to determine the possibility of implementing eco-labelling in South Africa.

7 This label does however not entail, as its main objective, the protection of the environment. The label is an initiative aimed at promoting South African products and services that achieve standards of good and responsible manufacturing practices, thereby promoting job creation as well as economic growth in the country. See, Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004]. This label must be further investigated to ascertain whether it could be used as a blue print for the development of an eco-label.

8 Council Regulation (EEC) NO. 880/92 of 23 March 1992.

2 The Nature of Eco-labelling

A report by the Fund for Research into Industrial Development, Growth and Equity defines eco-labelling as:

An eco-label is a market-driven environmental policy instrument used by policy-makers with the aim of promoting environmentally preferable goods and services. The label is applied to a product or service, warranting that the product or service complies with certain pre-determined environmental – and sometimes also social – criteria. The eco-label makes a positive statement about the environmental aspects of a product, and is a reward for the environmental leadership embodied in such a product.⁹

For the purpose of this dissertation, eco-labelling is defined as:

An eco-label is a voluntary market driven instrument, which is utilised by policymakers to protect the environment, by setting criteria for obtaining this label and promoting the eco-label's environmental qualities to the consumer.

An eco-label is also a market-driven environmental policy instrument aimed at promoting the development of environmentally sound goods and services through the power of consumer choice.¹⁰ Eco-labelling differs from setting minimum standards for products.¹¹ It is proposed that the key difference, is that eco-labelling is intended to reward a business that shows environmental leadership, whilst minimum standards are the prerequisites for a product to be acceptable for consumption or use by the public, whether eco-labelled or not. One of the essential tests of an eco-label is whether it leads to good long-term environmental management which is a fundamental condition for sustainable development in the production of goods and the delivery of services.¹²

9 The general aim of eco-labelling may be formulated as follows: Eco-labelling attempts to encourage the manufacturing of products that would reduce the impact they would have on the environment, and to address public concerns about raw material scarcity, shrinking landfill space, and the impact of pollutants on the air and water. See, Anonymous 2004 HYPERLINK www.lis.net.au/~ecomart/whatis ecolabelling.htm [Date of use 12 Aug 2004] and Anonymous 1998 HYPERLINK www.envirolink.org/resource.html?itemid=1005&catid=5 [Date of use 12 Aug 2004].

10 Hanks J *et al* 2002 HYPERLINK http://www.nedfac.org.za/research/fridge/eco_labelling/introduction.html [Date of use 12 Aug 2004].

11 The definition of minimum standards according to the dictionary is: "It is the least possible or attainable standard for a product that must be obtained to meet a certain standard". See, *The South African Pocket Oxford dictionary*, 1998.

12 Font and Buckley (eds) *Tourism Eco-labelling* Xvii.

Eco-labels are awarded by a government or privately sponsored agencies to voluntary applicants from enterprises. It is perceived as a market-oriented instrument for environmental policy because it establishes no generally binding requirements or bans.¹³ The criteria for the award of eco-labels call for an overall assessment of the ecological impact of a product during its life-cycle including, production, distribution, use, consumption, and disposal.¹⁴

It is important to distinguish between eco-labels that are effective in generating real benefits for environmental protection and sustainable development, from those that are ineffective or misleading in their claims. A consumer must have a clear understanding of the advantages of using such a product, as well as the associated environmental benefits ensured by using an accredited eco-label. Clearly a product must comply with certain criteria before being awarded the exclusive label. This is because some manufacturers may fraudulently claim their products are environmentally friendly, despite their manufacturing methods not having been tested against requisite environmental standards and criteria.¹⁵ The consumer must thus be made aware of the difference between accredited eco-labels as well as environmental initiatives that really benefit the environment and those products that only claim to be environmentally friendly, without making any positive contribution to the protection of the environment.¹⁶

Eco-labelling programs aim to protect the environment through raising consumer awareness of the environmental effects of products, and hence changing their behaviour as well as changing the manufacturing design of products in favour of environmentally-friendly products and technologies.¹⁷

13 Veena, Vossenaar and Zarrilli UNCTAD 1.

14 Veena, Vossenaar and Zarrilli UNCTAD 1.

15 Anonymous 2002 HYPERLINK <http://www.eco-labels.org/label.cfm?LabelID=109> [Date of use 5 Oct 2004] and Anonymous 2002 HYPERLINK <http://www.defra.gov.uk/environment/consumerprod/accpe/research/claims.htm> [Date of use 5 Oct 2004].

16 Wasik *Green Marketing* 93-95.

17 Anonymous 2004 HYPERLINK http://www.cercindia.org/index.html?/envis_whatisecolbl.htm [Date of use 12 Aug 2004].

It is proposed that the voluntary nature of the eco-label scheme makes it more special than any other environmental management tool. In other words, the scheme is not one where all manufacturers are compelled to meet the criteria.¹⁸ It only provides stakeholders, such as manufacturers, with incentives to comply with specified environmental standards that are higher than minimum standards. These incentives include, improved profits through a possible capture of a greater market share through producing and marketing more popular environmentally less harmful products. It is also clear that an eco-label would only be successful if the stakeholders adopt the standards required for the label. Even though it is voluntary, it may be attractive for them to do so, because of the above-mentioned rewards attached to such a label.

2.1 Different types of Eco-labels

There are many kinds of eco-labels and each have different characteristics which are unique to the type of label. Eco-labelling programs can be distinguished according to positive, negative or neutral characteristics.¹⁹ Positive labelling programs usually certify that labeled products pose one or more environmentally preferable attributes that help protect of the environment.²⁰ Negative labeling warns consumers of the harmful or hazardous ingredients contained in the labeled products.²¹ Neutral labelling programs simply summarise a products' environmental information. Consumers may as part of their purchasing decisions interpret the given information.²² Another kind of eco-label is the so-called third-party eco-label.

18 ISO 14001(standards for environmental quality management) is based on the same principle. This set of standards provides a prescriptive set of specifications that may be objectively audited for certification of self-declaration purposes. See, Puri C *Stepping up* 110.

19 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/introduction.html [Date of use 12 Aug 2004].

20 U.S. Environmental Protection Agency *Environmental Labeling* 9.

21 U.S. Environmental Protection Agency *Environmental Labeling* 9.

22 U.S. Environmental Protection Agency *Environmental Labeling* 9 and Naumann E *Policy Brief* 01/P19.

Usually eco-labelling programs rely on third-party verification.²³ Verification of the label is carried out by an independent party that awards labels to products based on certain environmental criteria or standards. In this way it is insured that the eco-label will have some form of credibility. This means that when consumers or purchasers see products with an eco-label, they know that these products have been carefully and impartially assessed, and have been found to be less environmentally adverse than other similar competing products, some of which may bear misleading environmental claims. Third-party environmental labeling programs can be further classified as mandatory or voluntary labels.²⁴ Mandatory programs include warning labels and information disclosure labels, and require producers to attach these eco-labels to their products before bringing the product to the market. It is thus a set of minimum standards that have to be fulfilled. Voluntary labels are usually positive or neutral, and encourage producers to apply for an eco-label. If they meet the criteria set to obtain the label it would be awarded to them.²⁵ This also means that the producer can take the initiative to ask that an eco-label be awarded to his/her product.²⁶

The importance of choosing the right type of label when establishing an eco-label should not be underestimated. The EU eco-label, as will be seen in subsequent paragraphs, makes use of a voluntary label which is neutral in nature and only gives the consumer the information necessary to choose between products that are harmful to the environment, and products that adhere to certain standards and are manufactured through environmentally friendly production methods. Products awarded a voluntary eco-label may

23 Chang SW *Journal of world trade* 137 and Anonymous 2004 HYPERLINK http://www.greenbiz.com/toolbox/essentials_third.cfm?LinkAdvID=7839&CFID=15682433&CFTOKEN=98581544 [Date of use 17 Okt 2004].

24 Anonymous 2004 HYPERLINK <http://www.epa.gov/oppt/epp/pubs/envlab/scope.pdf> [Date of use 23 Aug 2004] and Anonymous 2004 HYPERLINK <http://www.iri.org.lb/Eco%20Labeling.html> [Date of use 23 Aug 2004]

25 Tews, Busch and Jörgens 2001 HYPERLINK ["http://www.essex.ac.uk/ECPR/events/jointsessions/paperarchive/grenoble/ws1/tews_et al.pdf](http://www.essex.ac.uk/ECPR/events/jointsessions/paperarchive/grenoble/ws1/tews_et al.pdf) [Date of use 5 Oct 2004].

26 Tietje *Journal of World Trade* 123. The focus of this dissertation is on the awarding of voluntary eco-labels in South Africa that are subject to independent third party verification. As mentioned above in paragraph 2, it is important to remember that the eco-label is a voluntary label and that although it would be beneficial to be awarded such label manufacturers are under no obligation to obtain it.

simultaneously promote environmental protection and sustainable development. Consumers have the choice of buying products bearing the accredited label, and in so doing promote the protection of the environment. Should consumers show a clear preference for such labeled products, manufacturers might be pressured to comply with the required criteria which are of higher standards and use more environmentally friendly methods of manufacture and distribution. Hence, it is suggested that it is worth South Africa's while to use the voluntary eco-label, when deciding to implement it's own eco-label.

2.2 Some advantages and disadvantages of eco-labelling

Eco-labels pose certain advantages and disadvantages. In considering the viability, suitability, and possible environmental and other benefits of implementing an eco-label system in South Africa, it is necessary that such advantages and disadvantages be considered.

Firstly eco-labels informs consumers of their choices between products that are harmful to the environment and those more in line with sound environmental practices.²⁷ Secondly, eco-labelling promote environmental efficiency because it is generally more affordable than governmental regulation.²⁸ By allowing the consumer and the manufacturer to make decisions that support the environment, the need for regulation is kept to a minimum. Thirdly, consumers stimulate market development by influencing the demand and supply of products through their choice to buy products with an eco-label which invariably support environmental protection.²⁹ Manufacturers who notice this trend, for competitive reasons, promote environmental awareness and make products that are more environmentally friendly. Fourthly, a market that encourages eco-labelling, may lead to development and improvement of products' manufacture, and customers may

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- 27 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].
- 28 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].
- 29 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].

expect to see negative environmental impacts of products decline over time.³⁰ Environmental certification programs also have a seal of approval which shows that a product meets a certain eco-label standard. It may provide customers with visible evidence of the product's desirability from an environmental perspective.³¹ Finally, environmental claims with regard to a product can be easily monitored and thus competitors and customers are in a better position to judge the validity of a claim.³²

A number of challenges are associated with eco-labels. Building trust is one of the most important factors in the development of an eco-labelling program.³³ The credibility of the program and the label must be above any suspicion.³⁴ Arbitrary claims made in advertising and labelling, may leave customers confused and what inevitably follows is an inability to make a preferential choice in favour of a labelled product over an unlabelled one. Secondly, there must be an effort to ensure that all claims made on labelled products are informative.³⁵ Labels that provide trivial or irrelevant 'green' information do nothing to reduce environmental impacts, and might lead the consumers to conclude that an eco-label is just another gimmick for the producer to market its product and not to protect the environment.³⁶ Thirdly, there is the possibility that some companies will, for competitive reasons, fraudulently misrepresent that their production processes are pro-environment, whilst in reality their processes are no different from any other

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- 30 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].
- 31 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].
- 32 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004], Müller *Federation of German Consumer Organisations* 4, Folmer and Tietenberg *The International Yearbook of Environmental and Resource Economics* 107, Erskine *The Environmentalist* 125-127, Mattoo and Singh *KYKLOS* 53 and Shams *Intereconomics* 143; Anonymous 2004 HYPERLINK
http://www.pursuit.co.za/archive/augsep03_ecolabels.htm [Date of use 1 Sept 2004].
- 33 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].
- 34 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/introduction.html [Date of use 12 Aug 2004].
- 35 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004]
- 36 Anonymous 2002 HYPERLINK
http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].

company's.³⁷ This would amount to unfair competition to companies which spend their time and money to adhere to the regulations for obtaining the certified eco-label.

Environmentalists are sometimes critical of consumerism and consumer's right to choose what products they want to buy. They feel that consumption must be reduced and not just redefined.³⁸ Since eco-labelling programs will not cover the majority of goods, some critics point to regulation as a more effective tool than the development of voluntary standards to ensure the most effective compliance with environmentally safe production methods.³⁹

Having compared the advantages and disadvantages of eco-labelling, it is proposed that the advantages of eco-labelling outweigh the disadvantages. Eco-labelling should have a positive impact on society as a whole. Not only can it protect the environment but it may also lead to more environmentally friendly production methods by manufacturers, as well as giving consumers the choice to be more conscious of the environment. It may also empower them to, by way of their retail choices, proactively help exert pressure for the development of better environmental practices.

2.3 Government and corporate involvement in eco-labelling programmes

Although eco-labelling is voluntary it still requires regulatory structures. These would cover the requirements for awarding a label, the development and enforcement of criteria, and the appointment of third party assessors to evaluate products and determine whether such products comply with the standards of a certain eco-label, as determined by a panel of experts.

While government is a necessary participant in all eco-labelling programs, the extent of governmental participation varies across countries and programs. It

37 Sinclair R 1999 HYPERLINK <http://www.forests.qld.gov.au/educat/btl/ecolabel.htm> [Date of use 23 Aug 2004].

38 Anonymous 2002 HYPERLINK http://www.bsdglobal.org/markets/eco_label_benefits.asp [Date of use 11 Oct 2004].

39 Müller *Federation of German Consumer Organisations* 16 and Folmer and Tietenberg *The International Yearbook of Environmental and Resource Economics* 107.

may vary from active participation in management of the programs to simply providing financial support.⁴⁰

The advantages of government involvement in eco-labelling programs are that government may be in a better position to improve a programme's economic stability, legal protection, and credibility in the eyes of manufacturers and consumers.⁴¹ It provides more dependable, long-term resources, and also overcomes high start-up and compliance monitoring costs, thus allowing for greater participation by different manufacturers.⁴² It also provides more dependable, long-term resources.⁴³ Furthermore it allows for the incorporation of international standards and provides better accountability and technical expertise. Finally it ensures public involvement in setting new standards.⁴⁴

Some governments already have the necessary structures and resources to launch an eco-label and ensure its validity as well as the quality of such a label.⁴⁵ A government-supported label is more likely to succeed, than a label that is only developed by private stakeholders. However, this would only be the case if the government, itself and by implication the awarded label, is deemed credible by the general public.⁴⁶

Corporate involvement in eco-labelling schemes is also important. As mentioned above,⁴⁷ both government and private stakeholders have a duty to contribute to the development of a cleaner environment and in particular, private sector programmes aimed at the protection of the environment. These

40 Veena, Vossenaar and Zarrilli UNCTAD 9.

41 Anonymous 2002 HYPERLINK http://www.bsdglobal.org/markets/eco_labeling.asp [Date of use 11 Oct 2004].

42 Anonymous 2002 HYPERLINK http://www.bsdglobal.org/markets/eco_labeling.asp [Date of use 11 Oct 2004].

43 Anonymous 2002 HYPERLINK http://www.bsdglobal.org/markets/eco_labeling.asp [Date of use 11 Oct 2004].

44 Veena, Vossenaar and Zarrilli UNCTAD 10, U.S. Environmental Protection Agency Environmental Labeling: A Comprehensive Review of Issues, Policies, and Practices Worldwide Government Institutes 53 and Folmer and Tietenberg *The International Yearbook of Environmental and Resource Economics* 107.

45 These governments include America, Germany, Denmark.

46 Veena, Vossenaar and Zarrilli UNCTAD 10 and Anonymous 2002 HYPERLINK http://www.bsdglobal.com/markets/eco_labeling.asp [Date of use 12 Aug 2004].

47 See paragraph 1 above.

schemes may be less vulnerable to shifting political priorities and budget constraints. They may also, in some product sectors, be able to set more stringent standards than government agencies would. This is because they do not have to take into account employment impacts, and it may even be an effective way of pressurising overseas companies to comply with environmental regulations.⁴⁸ Corporate involvement may, furthermore, give greater stability to an eco-labelling program, especially in countries where political conditions are unstable. The involvement of corporate entities, or even non-governmental organisations (hereafter NGO's) can be used to convince the international community, and consumers that the label is judged in strict compliance with uncompromising criteria set by a competent panel of experts. Corporate involvement may also ensure that the knowledge the members of the eco-labelling board have of production and manufacturing, is taken into account when deciding the criteria for an eco-label, and whether it is possible for manufacturers to meet the set criteria. Private sector, involvement is good because it considers everyday economic realities that may be possibly detrimental to the economy.⁴⁹

In light of the aforementioned, it is suggested that it would be essential that both government and corporate entities be involved in the development of an eco-labelling program. By utilising both entities' knowledge and resources the creation of an eco-label may be greatly enhanced and expedited.

3 The current regulation of eco-labelling in South Africa

3.1 Introduction

It is necessary to look at the current regulation of eco-labelling in South Africa, because although voluntary eco-labelling schemes are not typically regulated by legislation (the exception being the EU flower, because of its trans-national

48 Anonymous 2002 HYPERLINK http://www.bsdglobal.com/markets/eco_labeling.asp [Date of use 12 Aug 2004].

49 Government on the other hand, in general, would have more knowledge of environmental impact studies and would as a rule be better informed about the environmental requirements needed for sustainable development.

nature), the legislative context within which an eco-labelling scheme functions will have a certain relevance. The eco-label scheme may be a legitimate and potentially effective mechanism for giving effect to, or furthering the aims and objectives of, policy and legislation. Policy and legislative direction may have a bearing on the relevance of creating the conditions that facilitate the successful introduction of an eco-labelling system.⁵⁰ In South Africa considerable change in environmental policy has taken place since the adoption of the Constitution. One of the main changes focuses on giving effect to sustainable development and bringing South Africa's environmental practice in line with international trends.⁵¹ The following paragraph studies the different environmental policies and different government and accreditation institutions in South Africa. The Proudly South African label, although not an eco-label, that is currently in existence in South Africa is also discussed.

3.2 Environmental policies in South Africa

After the adoption of the Constitution the approach to environmental regulation and management in South Africa changed substantially. According to the Constitution everyone has the right to the protection of the environment through reasonable legislative and other measures.⁵² There is thus a constitutional mandate for the creation of legislative measures for eco-labelling and there is an obligation on Government and interested parties to develop the necessary legal framework.⁵³ Presently South Africa does not have any legislation on eco-labelling and the regulation thereof. There is, though, NEMA, the environmental framework legislation.

50 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004]

51 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004]

52 Section 24(b) the Constitution.

53 The 5th environmental action plan of the EU placed the same obligation on the EU to develop the EU eco-label.

The new approach to environmental management is reflected in the *White Paper on the Environmental Management Policy for South Africa*, 1998.⁵⁴ The White Paper sets out the basis of a fundamental policy shift to an approach based on sustainable development as required by the Constitution.⁵⁵ *The White Paper on Environmental Management* only sets out government's broad policy on environmental management. There are separate policies that contain the detail of how certain objectives for environmental protection will be reached.⁵⁶ Many of the principles contained in these policies, as well as the broad management approach to the environment, have already been given legislative effect in the NEMA.⁵⁷

NEMA aims to give effect to the obligations relating to co-operative government contained in Article 41 of the Constitution when dealing with environmental matters⁵⁸ and it should be viewed as a framework for the integration of sound environmental management into all government activities.⁵⁹ Although co-operative governance is important for the implementation of certain environmental policies, it is proposed that the development of an eco-label would not need to be co-ordinated on different levels of government. If legislation for an eco-label were to be developed, it would be administered by one central institution that would ensure the credibility of the label. As framework legislation it must aim to define overarching and generic principles in terms of which sectoral-specific legislation is embedded, as well as to enhance co-operative environmental governance amongst fragmented line ministries.⁶⁰ It must furthermore provide

54 The White Paper on Environmental Management Policy for South Africa GNR749, GG18894 of 15 May 1998 and Glazweski *Environmental Law in South Africa* 162.

55 Section 24 of the Constitution.

56 The White Paper on Integrated pollution and waste management GN Vol 417 b020978 of 17 March 2000.

57 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

58 Section 41 of the Constitution.

59 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004] and Section 2(4)(l) of NEMA.

60 Bray *South African Journal on Environmental law Policies* 1-12.

general basic norms that may be used to introduce new environmental legislation or to amend or maintain existing legislation.⁶¹

The principles contained in Article 2 of NEMA serve as a general framework within which environmental management⁶² and implementation plans must be formulated, and guidelines set according to which any organ of state must exercise any function when taking any decision in terms of a statutory provision concerning the protection of the environment.⁶³ There are a few principles which may be of particular relevance to the development of an eco-labelling scheme. Firstly, social, environmental, and economic sustainable development must be achieved.⁶⁴ An eco-labelling program for South Africa may achieve social, environmental and economic sustainable development, by promoting South African products as being of a good quality that must adhere to certain standards.⁶⁵ Not only would this promote environmentally friendly production methods, but also increase the demand for South African products, thus helping to produce products that can be exported without draining the natural resources of the country. Secondly, the polluter pays principle, requires that the cost of remedying pollution, environmental degradation and consequent adverse health effects, must be paid for by those responsible for harming the environment.⁶⁶ If manufacturers have to comply with eco-labelling criteria, they would bear the cost involved and thus apply polluter pays principle. The study of products through their entire life cycle is also important.⁶⁷ A product's life cycle must be determined. When developing criteria for an eco-label, a products' whole production must be beneficial to the environment. This same principle was followed in developing the EU eco-

61 Nel and Du Plessis *SAJELP* 1-33.

62 Section 2(4)(b) of NEMA.

63 Hanks J *et al* 2002 HYPERLINK

http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

64 Section 2(2) of NEMA.

65 Article 15 of Council Regulation (EEC) No 880/92 of 23 March 1992, basically set out the same principle, relating to information to the public, that would inform them of the valuable qualities of products with the eco-label. This principle in chapter 1 of NEMA is important as it links South Africa's environmental policy firmly to the United Nations Conference on Environment and Development plan for sustainable development on a global scale, Agenda 21. See, Couzens E *SAJELP* 16.

66 Section 2(4)(p) of NEMA. The polluter pays principle is also mentioned in article 130s(5) of the *Single European Act*, 1987.

67 Section 2(4)(e) of NEMA.

label.⁶⁸ It would also be important to facilitate participation of consumers and manufacturers, and this would include the development of capacity to facilitate equitable and effective participation.⁶⁹

The success of an eco-label depends to a large degree both on the way it is perceived by consumers, and if manufacturers adopt it in their production methods. It is thus important to ensure that manufacturers and consumers are aware of the advantages of the label and why they should prefer products with the label, rather than alternative products. Furthermore, people must be empowered through environmental education and their environmental awareness must be raised.⁷⁰ Only environmentally educated consumers may consciously choose to buy a product with an eco-label. Therefore it is very important to market eco-labels correctly. It may also be necessary to make sure that more of the public are educated on the importance of protecting the environment. Finally, there must be transparency in any decision, concerning the environment and access to relevant information must be according to the law.⁷¹ The right of access to environmental information is the cornerstone of public participation in environmental governance. It is important that people be informed of the state of the environment and of issues which may affect the environment. This is to facilitate meaningful participation in environmental protection.⁷² To obtain the confidence of both manufacturers and consumers, it would be necessary for the eco-label to be transparent and inspire confidence. If information on the label and any decisions made in connection thereto were freely available to the public, it would promote trust in the eco-label.

It can thus be seen that some of the underlying principles of the NEMA already create the basis for the development of a South African eco-label, and

68 Article 1, 3(d), 5(4) of Council Regulation (EEC) No 880/92 of 23 March 1992.

69 Section 2(4)(d) of NEMA and Article 6(2) of Council Regulation (EEC) No 880/92 of 23 March 1992.

70 Section 2(4)(f-h) of NEMA.

71 Section 2(4)(k) of NEMA and Article 15 of Council Regulation (EEC) No 880/92 of 23 March 1992.

72 Kidd *South African Journal on Environmental law Policies* 26.

by using these principles in NEMA as basis, it may be possible to develop legislation for implementing a voluntary eco-label.

3.3 Government departments and accreditation institutions

As will be seen in the EU eco-labelling program discussed below,⁷³ it is important for government to take part in developing an eco-label, even if it be a voluntary instrument.⁷⁴ Different government departments in South Africa could potentially play a role in the development of an eco-label for South Africa. These include, for example, the Department of Environmental Affairs and Tourism, the Department of Minerals and Energy, the Department of Arts, Culture and Technology and the Department of Trade and Industry.⁷⁵ Representatives from these departments may form the South African equivalent of the European Union Eco-labelling Board (EUEB) which develops product categories for the EU eco-label. These representatives would then have the responsibility to decide whether criteria must be developed for certain product categories or not. They may refer the chosen products to an institution that determine the criteria for the product range. In South Africa this could be any of the institutions under South African Standards, Quality Assurance, Accreditation and Metrology system (SQAM).

Accreditation, certification, and the setting of standards are some of the most important aspects of an eco-labelling scheme. In the South African context this responsibility falls within the scope of the SQAM system.⁷⁶ The SQAM system is responsible for setting standards, developing and maintaining physical standards, performing quality assurance tests, and guaranteeing that role players are competent to carry out their tasks. Bodies that are sub-

73 See paragraph 4 below.

74 See paragraph 2 above.

75 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

76 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

divisions of SQAM are the South African Bureau of Standards (SABS)⁷⁷ and South African National Accreditation Standards (SANAS)⁷⁸ The national Department of Trade and Industry is responsible for the SABS, the national standards controlling body. The SABS formulates and implements standards policy. The SABS also represents the South African government's viewpoint at the International Standards Organisation (hereafter ISO). Thus, the SABS was involved in the drafting of the new ISO 14000 series.⁷⁹ Determining the criteria for products that have been selected to obtain eco-labels, can thus be done by one of these institutions. It would thus not be necessary to develop a separate body for this purpose and possibly resulting in less financial expenses.

3.4 The Proudly South African campaign

The Proudly South African brand campaign was launched in October 2001 with the goal of encouraging economic transformation and job growth in the country through the promotion of local products that achieve standards of good and responsible manufacturing and services.⁸⁰ Born out of the 1998 Presidential Job Summit, the Proudly South African campaign is driven by the National Economic Development and Labour Council (NEDLAC). It enjoys the support of the South African Chamber of Business as well as the Congress of South African Trade Unions (COSATU).⁸¹

77 This is the official body for the development and publication of standard, with an emphasis on products and services.

78 This is the single National Accreditation Body that accredits laboratories, certification bodies, inspection bodies, and product conformity certification bodies and bodies responsible for the certification of personnel and training.

79 Hugo A 2004 HYPERLINK <http://www.un.org/dpcsd/earthsummit> [Date of use 4 Okt 2004]. ISO are International Standards that contains guiding principles and practices, criteria procedures, and guidance for certification procedures for the development of multiple criteria-based, third party environmental labelling programs See, Puri C *Stepping up* 110.

80 Irwin R 2004 HYPERLINK <http://www.brandchannel.com> [Date of use 9 Sept 2004] and Notice 404 of 2002 Department of trade and Industry First edition environmental implementation plan (EIP) 2001.

81 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

Only member companies can use the Proudly South African logo on their products to identify themselves to consumers. Membership criteria is based on four factors. Firstly, a company's products or services must incur at least 50 percent of its production costs, including labour, in South Africa and be "substantially transformed" in the country, meaning that a company cannot merely import and repackage a product. Secondly a company's products and services must also be of a consistently high quality. Thirdly, a company must furthermore be committed to fair labour practices; and fourthly the company must be committed to sound environmental policies.⁸²

It can thus be seen that the Proudly South African label not only aims to promote economic and job growth, but already requires sound environmental policies. It is proposed that it may be possible to develop this aspect of the label into an eco-label for South Africa.

One of the most challenging aspects of the development would be to convince the consumer of the quality of the products bearing this label. In this regard the administrators of the Proudly South African label initiated a strategic partnership with the internationally respected South African Bureau of Standards Holdings (SABS) to ensure quality on all Proudly South African branded products. Proudly South African may assist SABS by offering the Proudly South African brand on negotiated terms to SABS client companies. At the same time, SABS may help the proudly South African brand members, the biggest growing portion which hail from the SME (small to medium enterprise) sector, adhere to global levels of quality.⁸³

It is proposed that it is preferable that the environmental component of the Proudly South African campaign must be further developed, rather than developing a completely new and separate initiative. A separate eco-label would need significant resources to establish a separate self-sufficient and independent administrative structure and marketing programme. Furthermore

82 Irwin R 2004 HYPERLINK <http://www.brandchannel.com> [Date of use 9 Sept 2004].
Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

83 Irwin R 2004 HYPERLINK <http://www.brandchannel.com> [Date of use 9 Sept 2004].

it may lead to confusion on the side of the consumer if there are too many indistinguishable eco-labelling initiatives, and they are not able to distinguish between eco-labels with real benefits to the environment and labels that only claim to be environmentally friendly.

4 International perspectives

4.1 European eco label

4.1.1 Introduction and background

It is necessary to look at the development of the EU's legal framework for their environmental policy, with specific reference to legislation that relates to eco-labelling. In doing so, it shall become clear whether South Africa has the necessary framework to establish and implement an eco-label, and if not, what should be done to create such a framework.

A Regulation was used to create the EU eco-label. The criteria, structure and procedures were developed through decisions by the EU Commission (hereafter Commission) and addressed to different member states.⁸⁴ Thus it is prudent to discuss the relevant Regulation as a tool to implement the EU's policies.⁸⁵

4.1.2 The EU eco-label legal framework and institutions

This paragraph shall take an in-depth look at the objectives of the Council Regulation (EEC) NO.880/92 of 23 March 1992 (hereafter EU regulation)⁸⁶ which implemented the EU eco-label and study how criteria for certain products were developed. The objective of the EU regulation was to promote products with a reduced environmental impact throughout their whole life

84 Council Regulation (EEC) NO.880/92 of 23 March 1992.

85 Another tool used to implement the EU's policies are directives. Directives are mandatory legal instruments which are binding on all member states with regard to the results to be achieved, but leaves the choice of form and methods to the national authorities. See, Krämer *Focus on European Environmental Law* 7 and Craig and De Búrca *EU Law* 109.

86 Council Regulation (EEC) NO.880/92 of 23 March 1992.

cycle, compared to other products in the same product group.⁸⁷ Thus the EU eco-label was designed to promote products that have a reduced environmental impact compared with other products in the same product group. It provides consumers with accurate and scientifically based information and guidance on products.⁸⁸ The EU eco-label is exclusive in nature since there are certain products (for example foodstuffs, drinks and pharmaceutical products) that are excluded from the regulation's scope.⁸⁹ The eco-label may be awarded to products available in the EU which meet certain environmental requirements and specific eco-label criteria.⁹⁰ Eco-label criteria must be established according to the product group and may be based on the product's prospects of market penetration, the technical and economic feasibility of the necessary adaptations, and the potential for environmental improvement.⁹¹ The criteria are set and reviewed by the EUEB, which is also responsible for the assessment and verification of requirements relating to the criteria. The Commission and the member states must promote the use of the eco-label by means of awareness raising actions and information campaigns.⁹²

The EU regulation stipulated that no later than five years after its entry into force the Commission should examine the scheme and propose any

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- 87 Anonymous 2003 HYPERLINK <http://europa.eu.int/scadplus/leg/en/lvb/l28020.htm> [Date of use 11 Oct 2004], Anonymous 2002 HYPERLINK http://www.ewindows.eu.org/ManagementConcepts/communication/parliament_view/Reg880_92.htm [Date of use 13 Oct 2004], Anonymous 2004 HYPERLINK http://www.emcentre.com/textile/LT_EU.htm [Date of use 13 Oct 2004] and Article 1 of Council Regulation (EEC) No 880/92 of 23 March 1992.
- 88 Anonymous 2003 HYPERLINK <http://europa.eu.int/scadplus/leg/en/lvb/l28020.htm> [Date of use 11 Oct 2004].
Anonymous 2004 HYPERLINK <http://www.defra.gov.uk/environment/consumerprod/ecolabel/intro.htm> [Date of use 13 Oct 2004] and Article 1 of Council Regulation (EEC) No 880/92 of 23 March 1992.
- 89 Anonymous 2002 HYPERLINK http://www.ewindows.eu.org/ManagementConcepts/communication/parliament_view/Reg880_92.htm [Date of use 13 Oct 2004] and Article 2 of Council Regulation (EEC) No 880/92 of 23 March 1992.
- 90 Anonymous 2003 HYPERLINK <http://europa.eu.int/scadplus/leg/en/lvb/l28020.htm> [Date of use 11 Oct 2004] and Article 4 of Council Regulation (EEC) No 880/92 of 23 March 1992.
- 91 Anonymous 2003 HYPERLINK <http://europa.eu.int/scadplus/leg/en/lvb/l28020.htm> [Date of use 11 Oct 2004] and Article 5 of Council Regulation (EEC) No 880/92 of 23 March 1992.
- 92 Anonymous 2003 HYPERLINK <http://europa.eu.int/scadplus/leg/en/lvb/l28020.htm> [Date of use 11 Oct 2004].

necessary changes. To implement those changes, this Regulation has been repealed and replaced by Regulation (EC) No 1980/2000 of 17 July 2000⁹³ (hereafter revised EU regulation). According to the revised EU regulation the objective of the Community eco-label is to promote products which have the potential to reduce negative environmental impacts, compared to other products in the same product group, thus contributing to the efficient use of resources and a high level of environmental protection through their whole life cycle. Furthermore the label must be promoted to the public through the presentation of non-deceptive and accurate information about the qualities of the label.⁹⁴ As earlier discussed above it would be important for the South African label to be transparent and inspire confidence with consumers. Therefore information about the label would have to be accurate.⁹⁵

Article 2 of the revised EU eco-label determines that the Community eco-label may be awarded to products which comply with the essential environmental requirements and specific eco-label criteria. The label may be awarded to products which contribute significantly to improvements in relation to key environmental aspects.⁹⁶

Specific eco-label criteria shall be established according to product groups.⁹⁷ These criteria will set out the requirements for each of the key environmental aspects⁹⁸ which a product must fulfil in order to be considered for the award of an eco-label, as well as requirements relating to the products fitness in meeting the need of consumers.⁹⁹ The process of identifying and selecting the key environmental aspects, as well as setting the eco-label criteria include the following steps: a feasibility and market study; life cycle considerations; improvement analysis; and proposal of the criteria. The eco-label criteria must seek to ensure that the consumers will choose the products which comply

93 Regulation (EC) No 1980/2000 of 17 July 2000.

94 Article 1 of Regulation (EC) No 1980/2000 of 17 July 2000.

95 See paragraph 3.2 above.

96 Article 3 of Regulation (EC) No 1980/2000 of 17 July 2000.

97 Product group means any goods or services, which serves similar purposes and are equivalent in terms of use and consumer perception. See Article 2 of Regulation (EC) No 1980/2000 of 17 July 2000.

98 Key environmental aspects that are important through the products whole life cycle and must be taken into consideration when developing eco-labelling criteria.

99 Article 3 of Regulation (EC) No 1980/2000 of 17 July 2000.

with the eco-labelling criteria and thus have greater prospects of market penetration. The criteria must also take into account the technical and economic feasibility of changes necessary to comply with the criteria. The criteria must be developed to achieve the maximum potential for environmental improvement.¹⁰⁰

The eco-labelling criteria are set and reviewed by the EUEB, which is also responsible for the assessment and verification requirements relating to them.¹⁰¹ The procedure for setting or developing eco-label criteria must be started by the Commission on its own initiative or at the request of the EUEB. The Commission must give a mandate to the EUEB to develop and periodically review the eco-label criteria.¹⁰² On the basis of the mandate, the EUEB must draft the eco-label criteria by taking into account the results of feasibility and market studies, and also the life cycle of the product through its whole life.¹⁰³ The equivalent of the Commission should be developed in South Africa. The body should comprise of different entities from the private and government sector. This may be include, for example, representatives from industry, representative from the Department of Trade and Industry. The equivalent of the EUEB which would be responsible for the development of eco-label criteria, could be the SABS, as it already has knowledge of the working of the ISO 14000 series.

In the EU manufacturers, importers, service providers, traders and retailers may apply to a competent body in a member state to be awarded the eco-label, if they comply with the criteria that is set out for their product group. The competent body assesses whether the product conforms to the criteria of the eco-label and decides whether to award the label. A standard contract is then concluded with the applicant, covering the terms of use of the label.¹⁰⁴ In South Africa, the body which would be responsible for the awarding of the eco-label should draft such a standard contract.

100 Article 4 of Regulation (EC) No 1980/2000 of 17 July 2000.

101 Articles 5,17 of Regulation (EC) No 1980/2000 of 17 July 2000.

102 Article 6(2) of Regulation (EC) No 1980/2000 of 17 July 2000.

103 Article 6(3) of Regulation (EC) No 1980/2000 of 17 July 2000.

104 Article 7 of Regulation (EC) No 1980/2000 of 17 July 2000.

Member states and the Commission shall in co-operation with the members of the EUEB, promote the use of the EU eco-label by awareness raising actions and information campaigns for consumers, producers, traders, retailers and the general public, thus supporting the development of the EU eco-label.¹⁰⁵ As earlier indicated,¹⁰⁶ one of the principles of NEMA is to empower the people of South Africa through environmental education to raise their environmental awareness.¹⁰⁷ The eco-labelling legislation that may be drafted for South Africa should contain a provision that would fulfil this requirement.

Applications for the award of an eco-label are subject to payment of a fee. The use of the label is also subject to the payment of an annual fee by the user.¹⁰⁸ In South Africa it would also be necessary to charge a fee for the use of the eco-label. These fees would ensure that the quality of the product criteria is up to standard, and would help to finance the creation of all the structures needed to administer the eco-labelling scheme.

Implementation of Community norms by member states involves adapting national legislation, administrative structures, and procedures so that they conform to regulations and directives, and putting EU norms into practice.¹⁰⁹ The Commission implements the measures set out in the revised EU regulation through decisions. A decision is binding in its entirety on those to whom it is addressed.¹¹⁰ EU institutions remain free to proceed by way of decision in many areas.¹¹¹ The EU Council is free to delegate power to the Commission to take decisions, which are within the competence of the Council itself.¹¹² Many decisions relating to the EU eco-label have been made. For instance the Commission Decision of 10 November 2000 establishing the application and annual fees of the Community eco-label. The Decision sets minimum and maximum fees, and the reductions granted in

105 Article 10 of Regulation (EC) No 1980/2000 of 17 July 2000.

106 See paragraph 4.2 below.

107 Section 2(4)(f-h) of NEMA.

108 Article 12 of Regulation (EC) No 1980/2000 of 17 July 2000.

109 Shaw *Law of the European Union* 298.

110 Vincenzi and Fairhurst *Law of the European Community* 38, Craig and De Búrca *EU Law* 109 and Krämer *Focus on European Environmental Law* 229.

111 Craig and De Búrca *EU Law* 109.

112 Article 202 EC Treaty.

certain cases.¹¹³ The EU eco-label was thus created by a regulation, but all the criteria, structures, and procedures for the development of the label are created by decisions taken by the Commission and are addressed to individual member states.

Different government departments in South Africa could potentially play a role in the development of an eco-label for South Africa. For example, the Department of Environmental Affairs and Tourism, the Department of Minerals and Energy, the Department of Arts, Culture and Technology and the Department of Trade and Industry.¹¹⁴ Representatives from these departments may form the South African equivalent of the European Union Eco-labelling Board (EUEB) which develops product categories for the EU eco-label. These representatives would then have the responsibility to decide whether criteria must be developed for certain product categories or not. They may refer the chosen products to an institution that determine the criteria for the product range. In South Africa this can be one of the institutions under South African Standards, Quality Assurance, Accreditation and Metrology system (SQAM).

4.1.3 Development of the EU eco-label

It is necessary to look at the further development of the EU eco-label, and characteristics that make it distinctive. The European Commission introduced a European-wide eco-labelling scheme,¹¹⁵ known as the EU Flower, on 23 March 1992¹¹⁶ as part of its fifth Environmental Action Plan,¹¹⁷ the focus of which was sustainability.¹¹⁸ The EU eco-labelling scheme is a voluntary scheme, which aims to promote products with reduced environmental impacts

113 Decision 2000/728/EC – Official Journal L 293 22.11.2000.

114 Hanks J *et al* 2002 HYPERLINK http://www.nedlac.org.za/research/fridge/eco_labelling/current_context.htm [Date of use 12 Aug 2004].

115 European Commission (hereafter EC).

116 Council Regulation (EEC) NO.880/92 of 23 March 1992.

117 Anonymous 1998 HYPERLINK <http://www.fern.org/pubs/archive/5eap.html> [Date of use 4 Oct 2004].

118 In July 2000 it was revised to streamline the scheme and widen the scope to include services, introduce a decreased fee structure, and increases the transparency of the scheme and to improve stakeholder involvement. Another date for revision is set before the end of September 2005.

throughout their life cycle and to provide consumers with better information about the environmental impact of products.¹¹⁹ The scheme is voluntary and independently approved, with an award being made to those products which incur the lowest environmental impact within any particular product group.¹²⁰ The development of the EU eco-label was to coordinate the application of environmental criteria across member states of Europe.¹²¹ The EU eco-label that was developed through using the common EU policy is thus the environmental reference for establishing criteria for consumer goods. This however does not mean that national eco-labels and EU eco-label cannot co-exist. However it would be necessary for member states and the European Commission to ensure there is coordination between the EU eco-label and other national schemes, particularly in the selection of product groups and the development and revision of criteria.¹²² It is suggested that the EU eco-label is popular because of its European character. It can be used throughout the EU and eliminates costly and multiple eco-label applications to different EU countries.

4.1.4 Criteria

It is necessary to have a more in-depth look at the practical criteria needed by a product to be awarded an EU eco-label, and especially at institutions needed to develop the criteria for the eco-label.

The EU eco-label can be awarded for a period of up to three years according to criteria, based on life cycle assessment (hereafter LCA).¹²³ To apply for a

119 Camilla, Erksine and Colins *The Environmentalist* 125-133, Jordan *et al* 2003
HYPERLINK www.europa.eu.int?comm./environment/ecolabel/. [Date of use 8 Sept 2004]

120 Erksine and Colins *The Environmentalist* 125-133.

121 Anonymous 2004 HYPERLINK
<http://www.defra.gov.uk/environment/consumerprod/ecolabel/intro.htm> [Date of use 13 Oct 2004].

122 Hanks J *et al* 2002 HYPERLINK
http://www.nedlac.org.za/research/fridge/eco_labelling/specific_analysis.htm [Date of use 12 Aug 2004].

123 Life cycle assessment is a systematic tool of assessing the environmental impacts associated with a product or service to: build an inventory of those inputs and outputs and identify the most significant aspects of the system relative to the objective of the study. LCA considers the environmental impact along the continuum of a products life from raw materials acquisition to production, use and disposal. See ISO 14031-

EU eco-label certain criteria must be fulfilled and steps followed. At a general level, the EUEB administers the EU eco-label.¹²⁴ It consists of the various competent bodies and members of the Consultation Forum.¹²⁵ At national level, a competent body, located in each EU member state, undertakes the administration. The competent bodies are the national points of access to the scheme and are responsible for receiving and assessing applications, concluding contracts with successful applicants, handling enquiries and contributing to the development of the criteria.¹²⁶ The selection of product groups and the development of ecological criteria for the EU eco-label, are initiated by the European Commission or by the EUEB, in consultation with the competent bodies. The application for the development of criteria for a product group to be awarded a label, must first be made to the national competent body (which would differ from country to country).¹²⁷ Then the application is considered by an advisory committee made up of officials from the different competent bodies and chaired by the EU Commission.¹²⁸ If the advisory committee cannot agree on product criteria through majority voting, the decision is left to the EU Council of Ministers.¹²⁹ Criteria for a EU eco-label are established as follows. First the advisory committee works out the product groups and criteria. One member state is then assigned as the lead country. The lead country forms an ad hoc working group involving the relevant parties (retailers, industry and consumers) to draft the product group criteria.¹³⁰

Guidelines on Environmental Performance Evaluation and Article 8(5) of Council Regulation (EEC) No 880/92 of 23 March 1992.

124 EUEB will contribute to the setting and reviewing of eco-label criteria.

125 The Consultation Forum represents five interest groups at EU administrative level, namely industry, environment, consumers, commerce and trade unions.

126 Article 10 of Council Regulation (EEC) No 880/92 of 23 March 1992.

127 Certain designated EU member states have a national competent body that consists of government and private stakeholders and Tietje C "Voluntary Eco-labelling programmes 124.

128 The Commission consists of 20 Commissioners. Only nationals of the member states are eligible as Commission members, and the Commission must include at least one national of each of the member states with no more than two. (Article 213 EC Treaty).

129 The Council consists of member of the governments of the member states authorised to commit the government of that member state' (Article 203 EC Treaty).

130 Jordan *et al* 2003 HYPERLINK www.europa.eu.int?comm./environment/ecolabel/. [Date of use 8 Sept 2004].

It can thus be seen that the EU has a well-developed structure for developing product groups and criteria for the EU eco-label. This may be the biggest challenge in implementing South Africa's own eco-label. If South Africa cannot use some of its present structures to implement its own eco-label, the investment needed to develop such structures might be too large. South Africa would also have to establish the necessary bodies to develop these criteria.

5 Conclusion

The Constitution and the *NEMA* provide for development and protection of the environment that should further sustainable development. The development of an eco-label may assist in reaching objectives designated by the Constitution. An eco-label intrinsically encompasses certain advantages that could contribute towards the success of realising sustainable development. The Constitution concurrently also provides for the implementation of legislative as well as other measures so as to successfully implement the principle of sustainable development.

Currently there is no legal framework to regulate eco-labelling in South Africa. Despite such lack of statutory structure as it relates to eco-labelling, South Africa does have at its disposal, environmental framework legislation and the Constitution, both of which may be utilised to facilitate the development of an eco-label coupled with the necessary ancillary legislation. The existing framework legislation should be further explored and developed to create an administrative framework for the development of an eco-label. Because of the concomitant advantages of eco-labelling there rests an obligation on government, industry and the public to seriously consider the development and establishing of a South African eco-label. Guidance in this regard should be derived from the EU, with its well established framework in regard to the administration and development of an eco-label. As previously mentioned, South Africa has its own framework dealing with environmental legislation and when drafting its own legislation for an eco-label, notice should be taken of the EU regulation and the revised EU regulation. The environmental component of the Proudly South African campaign could be further developed

into a South African eco-label. A South African eco-label, if established, may contribute to the achievement of sustainable development, which in turn may positively contribute to protection of the environment.

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