

# BRIEFING PAPER

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## Liberalisation of Environmental Goods and Services *Trade, Environment and Development – It's All or Nothing!*

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*The Doha Ministerial Declaration (DMD), of the WTO called for trade liberalisation in environmental goods and services (EGS); whilst recognising that such an order must be mutually supportive with embracing environmental protection, sustainable development and the interests of developing countries. As always, the grand mission is for the well-being of the world but actually achieving such a target is another thing altogether. At loggerheads are the WTO members, whom are a diverse bunch, corresponding with different proposals to answer such a mandate.*

### Introduction

A common approach must be prepared to effectively liberalise EGS and accomplish the goals of the mandate, but it is not so simple as it seems. At the outset exactly what is meant by EGS? Which goods and services can be defined or classified as EGS? There is no consensus among the WTO members on definition of EGS, which is not a promising start to achieving the aforementioned DMD aims! At present the World Customs Organisation Harmonised System identifies environmental goods via code levels, but this classification is deemed to be limited; while environmental services are determined in the present GATS classification list, nevertheless this list is agreed to be outdated also.

Hence submissions are being put forth to revive and even broaden EGS definition. Members of the WTO, Organisation for Economic Cooperation and Development (OECD) and Asia Pacific Economic Cooperation (APEC) have presented different listings of EGS for definition amendment. However it is essential that an appropriate analysis of these submitted lists is reviewed and to reflect upon other EGS that may be classified; needless to say, a suitable approach that will sustain not only the environment but also trade and development in developing countries must be realised.

WTO members have put forth two approaches: many opted for related 'list' approaches, while India stands out alone with its Environmental Project Approach (EPA).

### The Popularity of the List Approach

The US, EC, Switzerland, New Zealand and Canada determined similar list approaches to the classification of environmental goods. The submissions have divided

environmental goods and environmental services into separate proposals for classification. This reasoning exists because GATT covers environmental goods, while the GATS safeguards environmental services. But such listings must proceed with caution as in practice EGS are inherently integrated.

The proposed lists have been based on the APEC and OECD listings. However such identified environmental goods within these lists are beneficial to developed countries exports to a large extent only and offer little to developing countries' export interests; whom are net importers in listed environmental goods i.e. they import more of these environmental goods than they export. Even though the EGS global market (identified by APEC and OECD) was estimated at US\$550bn in 2003, developed countries dominate at least 80 percent of this market. Notably, the developed countries' EGS market is maturing, while developing countries' market is growing rapidly. Consequently, this establishes greater motivation to developed countries companies to access the developing countries' markets if liberalised.

Another dilemma elevates itself as certain identified environmental goods within these listings are inherently dual end use goods. Such goods encompass twin purposes in their end use. Hence an environmental good with dual use could be used for environmental products, but also non-environmental products. This provokes the issue that liberalisation of these goods may conflict with the Doha mandate if their non-environmental end use was to be liberalised. Although the EC have set out the possibility of classifying these goods in an integrated system, that would identify such dual end use goods are only to have market access that lead to environmental end use, through integration with other goods. Brazil and China demand more progress on the same.

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### Box 1: The Potential for the EPA

Instead of following developed countries submissions in these negotiations, India proclaimed its EPA with a certain pride. The member emphasised that the EPA is a rule-based system and that *transparency, flexibility and predictability* are intrinsic to the process. Transparency is ensured by the involvement of the WTO Committee on Trade and Environment (CTE) in the determination of a set of criteria concerning the EGS. While flexibility is guaranteed by policy space allowed to the national governments through the operations of a Designated National Authority (DNA). Notwithstanding its arguments assuring predictability, for instance that an exporter would have the assurance that if the goods or services are part of a project that falls under the agreed criteria, his/her application would be given due regard, most developed countries remain unconvinced on this aspect.

Under this approach, EGS used in environmental projects would qualify for specified concessions for the duration of the project. Such projects would be approved by the DNA and could include those endeavouring to meet national or international environmental targets, facilitating thereby the realisation of national EGS and compliance with bilateral and multilateral environmental agreements. However, the DNA would depend on the efficiency of the national authorities, which would naturally differ vastly from country to country. Matters might become mired in red tapism and politicisation when authority is transferred to a national level, not to mention instituting these authorities would be time consuming. But then again in this context, it might be remembered that the DNA envisaged under the EPA, can be likened to the DNA set up by developing countries under the Kyoto Protocol's Clean Development Mechanism

Another substantial benefit offered by the EPA is that it eschews the need for periodic renegotiations for the expansion of any list of approved goods and services, with the advancement of technology, since the issue of determining the removal of trade barriers would arise at the time of designation of the project and obviously the newest technological innovations would be taken into account then.

In addition, the issue of dual use of certain EGS would be mitigated to a large extent, since after completion of a particular project, the EGS utilised therein would cease to receive preferential treatment, which would obviously impede their continued use for non-environmental purposes.

## Production and Processing Methods

### *The Ball and Chain of EPPs Liberalisation*

There is a proposition to include Environmentally Preferable Products (EPPs) in the classification of EGS, such as organic products, non-timber forest products and related natural products, suggested by United Nations Conference on Trade and Development (UNCTAD). These EPPs environmental advantage arrives from their environmentally friendly production and processing methods (PPMs), even though their actual end use may not be environmental. The inclusion of EPPs would imply an attractive enlargement of the EGS global market to developing countries since they boast comparative advantage in these sectors and are seen to be principal exporters. This global EPP market was estimated to be around US\$28bn in 2000. This market trades between South-South at present, so there will be significant potential for developing countries' EPP exports if further access is asserted to both developing and developed countries' markets.

So where is the catch one asks? The snag is that EPPs galvanise the issue of whether a country can place conditions of market access on a good in relation to its PPMs. WTO rules deem that measures, taken against members' goods on the basis of their PPMs, are forbidden. This is to reduce Governments discriminating against any goods that are not manufactured to their own environmental or quality standards, which would lead to further protection of their industries and restrict trade.

However exception was found in the famous Shrimp Turtle case, when the US prohibited shrimp exported from certain developing countries in relation to their PPMs. The developing countries shrimp was not being caught in an

environmentally friendly manner and causing the death of many turtles. Although the US measure obviously was directed at the PPM of the exported shrimp, the Appellate Body reasoned that US could find exception under GATT Article XX(g) as the prohibition was primarily aimed at conserving 'natural resources'. There was uproar as such reasoning opened the door for similar protective measures against developing countries exports if they are not equipped to the environmental or quality standards of developed countries. Which potentially could happen if EPPs are included in EGS listings for liberalisation.

Hence China, Korea and US (ironically after the Shrimp Turtle embargo) argue against environmental goods being selected in relation to their production and process methods (PPMs).

Conversely Brazil supports the call for EPPs, realising the vast potential for export revenues in these markets. It is backed by EC, New Zealand and Switzerland, surely indicating that PPM issue to be resolved. There is a need to weigh the potential of EPP market liberalisation against possible discrimination towards the developing countries other exports based upon their PPMs.

### **Environmental Services: Isolated Matters**

Members can be flexible within the GATS agreement, as to select their own commitments for trade liberalisation of their preferred services. Therefore a consensus definition on environmental services is not as problematic as the definition of environmental goods, given that members can decide which services are acceptable for commitment. For example public sector environmental services do not have to be subject to trade liberalisation if not allocated in a member's schedule.

### Box 2: The Living List... It's Alive... Alive!

EC, Switzerland and New Zealand have all agreed that since environmental goods are constantly evolving, an agreed common list today may not include environmental goods of tomorrow. Therefore Switzerland demands that if a common list is to be asserted, such as the proposed 'living list' by New Zealand, it must be flexible and allowed room for amendment every two years. Although there would be the bane of constant amendments, it should be identified that in practice, most developments in technology would be made by the developed world; it seems likely that potential hindrance to developing countries would be minimal. Any dispute in which higher environmental technology could damage a developing countries SME sector, technical assistance and capacity building should be distributed to the harmed country, sustaining both the environment and development.

A service is identified by the GATS under four different modes of supply that service customers. Environmental services are typically delivered to consumers via commercial presence (Mode 3) or natural persons (Mode 4). There is less scope in environmental service through modes 1 (cross border trade e.g. financial trading) and 2 (movement of consumers e.g. tourism). Hence, the classification of environmental services by a member for trade liberalisation must be addressed in conjunction with that member's mode of supply commitments in its GATS schedule.

The current GATS list defining services also causes difficulty for integrated environmental services as they can be cross sectoral, at the moment services are identified in one sector as mutually exclusive. Therefore, once a service that has been identified under one sector, cannot be regarded in another and so not receive the same treatment accorded to those services selected in that sector. There has been little response to such a problem by members and the matter requires further debate.

The EC has proposed seven new sub sectors specific for environmental services to be classified under the GATS, to broaden the scope of the environmental services current classification. In consideration to the high level of

government environmental services, the EC proposed that where Private Public partnerships are available, members could commit to these services. Both EC and Australia has issued a general liberalisation in all four modes of supply, supported by Switzerland and Colombia.

### New Directions

Members' submissions corresponding to the liberalisation of EGS debate have produced more questions than answers. The future possibility of an EPA/ list approach combination will still require more substantial talks; possible directions that members could take are highlighted below:

- A proper consideration of the EPA 'criteria' proposed by India must be considered thoroughly. Currently it is circumspect that the criteria may need to differ depending on the environmental project chosen, which could lead to delay on consensus and increase confusion. Also there is a demand for further research of how successfully the EPA would benefit developing countries' export trade, as opposed to the list approach.
- Notably, EC and Switzerland suggest that in ascertaining the extent of low and high environmental impact goods, the issue should be determined via Multilateral Environmental Agreement (MEA) governance. Structuring the debate of EGS liberalisation around MEAs would be useful. Since the objectives codified in MEAs represent global consensus (such as the World Summit on Sustainable Development (WSSD) and Rio Declarations), the WTO could carve out two positive lists of environmental goods and environmental services that help meet the objectives of the MEAs and provide support for developing countries' exports. Alternatively one list approach could be generated as total package solutions in answer to MEA objectives. Once certain goods and services are identified that significantly tackle trade, environment and development issues (based on MEAs), these can then be listed in terms of a package solution rather than in sectors. For instance, an issue presented by the

### Box 3: Diverse needs for Special and Differential Treatment (S&DT)

Brazil, China and Cuba believe in S&DT should be applied to developing countries, on the basis of reducing tariffs or NTBs, with less than full reciprocity in their commitments of trade liberalisation.

Needless to say, trade gains for developing countries from S&DT are dependent upon the openness of their markets; it can be seen that more gains will be gifted to developing countries whose markets are more open. Nonetheless, greater admittance to S&DT for developing countries will not necessarily mean more gains from trade.

*"While S&DT may be a necessary evil given developing countries' higher adjustment costs, dignifying it as a development mechanism plays into the hands of protectionist interests. In particular, by allowing a general increase in the ability of developing countries to isolate their economies, it may reduce the efficacy of important forces that prod institutional reforms in developing countries. As institutional reform is one of the keys to economic development, lionising S&DT in the WTO is likely to be counter productive."* (Kerr W. A., Estey Journal, 2005)

Furthermore preferential treatment may be beneficial for some developing countries but on the other hand detrimental to others who would rather have full liberalisation of goods, as they are efficiently competitive in the goods concerned. SDT would have to be solved via a country-by-country basis leading to the harmonisation of S&DT to all developing countries and not only a certain few.

#### Box 4: Comparative Presentation

Environmental Project Approach	List Approach
<i>Positives</i>	
<ul style="list-style-type: none"> <li>• More directly aimed at environmental and development issues compared to the list approach, which shall be beneficial in these areas to developing countries.</li> <li>• Allows flexibility at the national level.</li> <li>• Employs more attention to the problem of dual end use of EGS, than does the list approach.</li> <li>• Avoids re-negotiations on technological advancement</li> <li>• Takes into account the inherent integration of EGS.</li> </ul>	<ul style="list-style-type: none"> <li>• Its simplicity and definitiveness reduces confusion and unnecessary disputes.</li> <li>• Beneficial to market efficiency as relaxes the need for government intervention in EGS markets.</li> <li>• Living list addresses future environmental goods classification</li> </ul>
<i>Negatives</i>	
<ul style="list-style-type: none"> <li>• Clarity and predictability is dependent on further development of the approach. Especially the criteria to be developed by the CTE remains vague.</li> <li>• The focus of environment and development issues may only complement EGS provided by developed countries, as developing countries suffer with such issues only. Hence this would undoubtedly provide more scope for developed countries' exporters rather than developing countries' exporters of EGS.</li> <li>• The EPA should be questioned as to the possibility of excess government intervention (DNAs) in EGS market, and whether this may slow down the efficiency of the companies in the industry.</li> </ul>	<ul style="list-style-type: none"> <li>• Detrimental effects could occur in developing countries regarding trade in the actual goods and services currently listed for liberalisation.</li> <li>• Little account has been taken of the fact that in most developing countries the EGS market is largely government controlled.</li> <li>• Currently the support for many EPPs serves purpose to developing countries but members have not found a proper solution to the PPM issue that is associated with the such goods.</li> <li>• There is not a noteworthy answer to the problem of dual end use EGS</li> <li>• EGS are treated as mutually exclusive under the list approach, which ignores the fact that EGS are inherently integrated.</li> </ul>

WSSD declaration, may need the efficient use of specific EGS; these EGS then could be listed as a package in order to fulfil this specific issue of the WSSD declaration; other issues will need separate packages of other specific EGS.

- A possible solution to the dual end use EGS debacle could also be provided by another fusion with respect to the list approach and the EPA. After a list of EGS is formulated, products, which might have possible dual use may be identified. Thereafter if possible, such dual end products might be sent as a total package solution, for instance by connecting the same with other environmental goods in a manner producing a direct environmental end product or solution. As regards the goods for which such a system is not practicable, the approach may be evolved which would consent that before importation of such goods, there would need to be a clear specification as to the use of such goods; the amount imported ought to be

consummate with such use and there would be the need to stipulate a tentative timeframe for such use after which preferential treatment of the same would cease.

#### Conclusion

The outcome of such negotiations may unwittingly but essentially underline that to effectively tackle trade, environment and development concerns, an approach must have significant consideration of all three concerns concurrent to dealing with each one.

A sustainable environment will not be created without the support of solution to trade and development issues. Heither would successful development take place if environmental and trade objectives are not met. Nor, finally, shall trade continue devoid of the consideration of the environment and development. The mission is simple and universally enhancing, but the action to fulfil such an endeavour remains terminally complex.

