

***ENVIRONMENTAL GOODS AND SERVICES NEGOTIATIONS AT THE WORLD TRADE
ORGANISATION: KEY ISSUES AND STATE OF PLAY****

Introduction

No other item on the World Trade Organisation's (WTO) negotiating agenda on trade and environment seem to raise as many questions or provoke as much speculation on possibilities as Para 31 (iii) of the Doha Ministerial Declaration which calls for the "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services." The evolution of the debate and statements made by WTO Members indicate that the issue has taken on dimensions that might not have been anticipated at the time EGS was, for the first time, singled out for liberalization as part of a formal WTO mandate. While the special sessions of the Committee on Trade and Environment (CTE) and the Negotiating Group on Market Access (NAMA) mandated to discuss Environmental goods have seen some constructive discussion and submissions, WTO Members still seem to be uncertain about how to proceed. Submissions on both procedural modalities and substantive aspects have taken place in parallel mode. Most Members still await concrete proposals or submissions by developing countries. Environmental services being negotiated within the special sessions of the Council for Trade in Services have witnessed a number of requests primarily from developed countries but few offers from developing countries so far. Here too the political emphasis contained in Para 31 (iii) seems to have done little to speed up the process.

The slow pace seem partly to have been affected by the deadlock on other WTO negotiating issues in the months leading up to Cancun as well as in the immediate post-Cancun phase. It remains to be seen whether the positive note for the WTO negotiations struck by the 'July Framework' Agreement as embodied in the 1st August General Council Decision (WT/L/579) will result in meaningful progress. Meanwhile developments in other for a such as regional trade negotiations could have more immediate sustainable development implications that will need to be taken into account both by domestic policy makers as well as for the Doha Round negotiations as well. The present chapter will attempt to analyse the significance of these negotiations, particularly from the trade and sustainable development perspective, the evolution of the negotiations as well as some important issues and 'fault-lines' characterising the talks and conclude with comments on the possible outlook ahead.

Definition and Scope of EGS

Environmental goods and services could, by a rule of thumb, be conceptualized in two ways. The *first* is the narrow, conventional conception that focuses on treating a specific environmental problem through the *end-use* of a particular good or service. This characterises the traditional classification of EGS and includes goods and services such as wastewater treatment equipment or solid waste disposal services.

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The *second* conceptualization is broader and includes within its ambit *environmentally preferable* products (EPPs) and services. The environmental benefits may arise from the (more environmentally benign) production method, during the course of its use (through lesser pollution and energy-consumption) or during the disposal stage of the product. In this case, the primary purpose of the product or service is not to remedy an environmental problem. Such products in many, if not most, cases will have a non-environmental counterpart and this raises the question of *like products and services* which will be treated in further detail later on in the chapter. There may also be an overlap between both these categories and some EPPs may be used to prevent or treat environmental problems as well. The lack of a universally accepted definition of EPPs notwithstanding, UNCTAD defines EPPs as products which cause significantly less “environmental harm” at some stage of their “life cycle” than alternative products that serve the same purpose, or products the production and sale of which contribute significantly to the preservation of the environment.

Different groups of countries each have had their own individual understanding and approach with regard to the definition and scope of environmental goods and it was upto the OECD and the Statistical Office of the European Communities (Eurostat) to play a pioneering role in proposing, for analytical purposes, a definition of the environment industry. The industry, according to the OECD and Eurostat comprises “ activities which produce goods and services to measure, prevent, limit, minimise or correct environmental damage to water, air and soil, as well as problems related to waste, noise and ecosystems.” The OECD has categorised these goods and services under three broad headings — pollution management, cleaner technologies and products, and resource management.

The Significance of EGS for trade, environment and sustainable development

Both these conceptualizations of EGS are important in the context of the trade, environment and sustainable development debate. Trade liberalization in EGS both narrowly and broadly defined will enable a freer flow of goods and services relevant to environmental protection. However whether the lower costs induced by lower or zero tariffs and non-tariff barriers will translate into *greater access* to these goods and services in developing countries remain to be seen. It is here that the role of suitable flanking policies and their mainstreaming into WTO rules may be important.

Greater and cost-effective access to EGS in developing countries would potentially:

- Help developing countries progress towards implementing the Johannesburg Plan of Implementation and achievement of key Millennium Development Goals (MDGs) particularly through the provision of critical services such as clean water and sanitation aided by appropriate goods and technology. This would obviously translate into better social indicators such as less disease and healthier individuals and cleaner environments.
- Provide a means of employment and economic activity particularly in the case of trade in environmental services via Mode 3 (commercial presence)
- Enable developing country firms including those producing for the export market to economise on resource/energy use and comply with better environmental standards.
- Increase access to new technologies and know-how “embedded” in EGS

Many developing countries would also like any basket of EGS to include products of export interest to developing countries, such as, for example: agriculture or traditional knowledge

based goods, that, apart from obvious environmental benefits, could also provide an important source of export earnings and livelihoods to local populations. Many experts consider that such a shift in focus requires a better understanding and quantification of the sustainable development benefits that would arise from the liberalisation of environmental goods and services. In sum, access to EGS through imports and exports of EGS could serve to strengthen the ‘economic’ ‘social’ and ‘environmental’ pillars of sustainable development. From the perspective of EGS trade negotiations, however, a number of issues will need to be confronted however in order to make this possible.

Paving the Road to Doha: A Pre-negotiating history and EGS developments in other fora

The Asia Pacific Economic Community (APEC) adopted the OECD/Eurostat definition of environmental goods when it picked the environmental goods sector for inclusion in its Early Voluntary Sector Liberalisation (EVSL) initiative launched in 1997 on the model of the Information Technology Agreement (ITA) that was completed the same year. The EVSL was aimed at rapid liberalisation in select sectors to be picked by all APEC Members who would also develop frameworks that specified product coverage and phase-outs of tariffs. This would then be proposed to the WTO for broader support. Following lack of significant momentum on liberalisation, that depends on voluntary initiatives rather than negotiations at APEC, mMembers of the economic grouping reportedly shifted the tariff cutting part to the WTO preferring to focus instead on non-tariff barriers and technical cooperation. The APEC list, drawn up on the basis of individual nominations, refers to the OECD/Eurostat definition. Experts have however pointed to the differences as well with regard to inclusion and exclusion of certain categories of goods such as ethanol that is contained in the OECD but not the APEC list.

In addition to the OECD/APEC initiatives, environmental goods have also been a part of other regional trade liberalization initiatives such as the North American Free Trade Agreement (NAFTA). Tariffs on environmental goods are expected to fall dramatically as a result of regional initiatives such as the Central American Free Trade Agreement (CAFTA). CAFTA for instance, takes a far more ambitious approach to the liberalization of services as compared to the WTO and unless Members explicitly reserve certain services all service sectors are presumed open. (However, public services like at the WTO are automatically excluded). CAFTA also includes disciplines on government procurement for both goods and services which could have implications for trade in environmental goods and services through the government procurement channel.

Significant outcomes, relevant to EGS have also taken place in the environmental and development policy realms, although EGS has not been singled out as in the WTO Doha mandate. Multilateral Environmental Agreements (MEAs) such as the Montreal Protocol and Kyoto Protocol add significance to trade and investment in EGS that will be necessary to meet these environmental goals. These include for example, provisions on technology transfer contained in the Montreal Protocol (Article X:A) and the Clean Development Mechanism (Article XII). The Johannesburg Plan of Implementation, emerging from the 2002 World Summit on Sustainable Development in Johannesburg calls on countries to “support voluntary WTO compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, including organic products [...]” The UN Millennium Development Goal #7 enjoins governments to ‘ensure environmental sustainability’ through, *inter alia*, integrating the principles of sustainable

development into country policies and programmes and reverse the loss of environmental resources; halving, by 2015, the proportion of people without sustainable access to safe drinking water and having achieved, by 2020, a significant improvement in the lives of at least 100 million slum dwellers. It is clear that all these different goals emerging from various sustainable development fora would require for implementation purposes or as outcomes, EGS in the broadest sense of the term.

Environmental Goods

Negotiations on environmental goods have not been characterized by a significant degree of momentum, particularly in the immediate post-Doha phase of negotiations until Cancun. This may be attributed first and foremost to a lack of clarity in the Paragraph 31(iii) mandate, which does not contain a formal timeline for negotiations on EGS apart from the overall deadline for the Single Undertaking. The mandate does not specify what EGS constitute nor does it specify the extent of liberalisation sought to be attained. While few, key submissions, both with regard to the modalities and substance, were made during this period. Submissions on both modalities and substantial aspects have taken proceeded in a more or less “parallel” manner rather than in distinct phases.

The Negotiating Dynamics: Key Issues and Fault-lines

An assessment of the negotiations to date and informal consultations with delegates in Geneva have revealed the following key aspects including nodal issues and fault lines of the EGS negotiating dynamics:

Definition vs List approach

While the OECD and APEC definitions of EGS have been used as a starting point for exploring the scope of environmental goods, the lack of a clear definition of environmental goods has prompted WTO Members to also consider a “list-approach” whereby Members would propose specific items they would like to see included in a list of environmental goods. However the definitional approach has been reiterated in different by some Members such as New Zealand who have reportedly stressed on the justification for including any products in a list of environmental goods. The U.S has proposed that while the APEC lists was a useful contribution, given the evolutionary nature of the debate, the Negotiating Group will have to come to its own agreement on scope. This would require Members to consult with their domestic industries, NGOs, and other interested stakeholders to identify new products that could be included and to develop a WTO list

The Process and Production Methods Issue

Many if not most developing countries are interested in including products of export interest in any basket of environmental goods that are negotiated. The reality however is that most developing countries lack a comparative advantage in traditionally defined environmental goods that are capital or technology-intensive. Hence some countries such as Kenya have proposed the inclusion of agriculture or natural resource based products that fall into the broader category of environmentally preferable products (EPPs). This, for a number of other countries, both developing and developed, has raised the dilemma of Process and Production Methods (PPMs), which in most cases would be the only criteria for including such products. At the time of writing, most WTO Members want to avoid using the PPM

criteria, partly owing to fears of setting a precedent for introducing the concept within WTO rules. It also raises the difficult issue of finding other suitable PPM-circumventing criteria for 'Southern exportables'.

Relativity and 'evolving technology' issues for certain EPPs

Even for those EPPs where the PPM issue does not arise, the fact that 'environmental friendliness' is a relative concept poses potential problems, especially where superior substitutes exist or may be used in the future. Qatar's proposal on natural gas (see below under State-of-Play) for example raises the question of whether natural resources such as relatively eco-friendly fuels can also be considered an environmental good and benefit from lowering or removing tariff and NTBs (including subsidies to alternative or 'substitute' fuels such as coal). Some experts believe that if hydrogen evolved into a fuel for popular use, natural gas would lose its status as an environmental good. The question then would be how a preference could be provided to hydrogen if no barriers at all exist to trade in natural gas and related goods. A related issue is the need to create a separate tariff category for EPPs, such as energy-efficient products, from the normal tariff heading if such a category was accepted in the course of the negotiations on environmental goods. For example, dividing refrigerators into ordinary and energy-efficient refrigerators. Many of these energy-efficient goods, however, are also subject to rapid change in technology. What may be considered energy-efficient today may not remain so tomorrow. Thus if an energy-efficient EPP were put under a different tariff heading for purposes of greater tariff preferences, it is not clear how it may be treated if a superior product evolves the next year. Which tariff heading will this superior counterpart be classified under? Raising tariffs again on the old product may not be feasible option.

Appropriate sub-division of the Harmonised System of Classifications and dual use products

In many cases environmental goods are classified in the HS under broad 6-digit headings, which may also include other 'non-environmental' goods. For example meters for environmental measuring and monitoring equipment may be classified under the broader heading of 'measuring and monitoring' equipment. In such cases, the 6-digit classification may need to be split in order for the environmental monitoring equipment and not all such equipment to benefit from tariff and NTB reduction/elimination. In other cases it may not be easy to make such a division as the same product may have multiple uses some of which may be non-environmental. Pipes imported as part of a sewage treatment plant, for example, could also be used for other purposes.

Non-tariff barriers

Several members have pointed out the need to address the issue of non-tariff barriers (NTBs) facing exports of and access to environmental goods. These may be much more significant barriers than tariffs and could include, among others, various kinds of technical and sanitary standards, subsidies and labelling. They may also include Intellectual Property and licensing requirements that have been identified by some experts as a constraining factor for developing countries, particularly small firms, in gaining access to environmentally sound technologies (ESTs). It is possible that Members may decide to focus primarily on tariffs at this stage of the negotiations leaving the various types of NTBs to be discussed as part of the ongoing negotiations on Rules for instance or in specific committees (TBT, SPS etc).

Negotiating forum

The question of where sustainable agricultural or forestry products would be discussed and whether these would be subject to modalities for NAMA or the modalities for the Negotiating Group on Agriculture will need to be clarified.

Pace and depth of liberalisation 'vis-à-vis' non-EPPs

Some WTO Members have advocated against any preferential liberalisation of EGS, including any EPPs, arguing for instance that liberalisation should extend to *all* products of export interest to developing countries and any additional reduction should be 'compensated' by concessions in other areas. In this sense a benefit from EPPs will accrue only to the extent that a 'preferential' market access margin is maintained vis-à-vis their 'non-environmental' counterparts, as ultimately the objective is to liberalise tariff and non-tariff barriers on *all* goods and services.

State of Play

The 1st August General Council Decision only takes note of the reports to the TNC by the Special Sessions of the Committee on Trade and Environment. Annex B of the Decision that lays down the framework for establishing Modalities in Market Access for Non-Agricultural Products reaffirm that "...negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. It also reaffirmed the "...the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities." It further encouraged the Negotiating Group "...to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of *non-agricultural* (emphasis added) environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration."

At the time of writing Members have not made significant negotiating progress on environmental goods. Apart from the challenges mentioned above, lack of significant progress, particularly in key issues such as agriculture, has been a constraining factor. With regard to concrete proposals on goods, only Japan (TN/MA/W/15) and Qatar (TN/TE/W/19), Taiwan (TN/TE/W/44), Korea (TN/TE/48) and New Zealand (TN/TE/W/49) have submitted proposals on specific products. Japan's list includes products from both APEC and OECD lists plus some additional products. Notable in this list are energy-efficient consumer equipment. Many WTO Members, however, have raised the issue of appropriate customs classification of these products, which may require further inputs from organisations such as the World Customs Organization (WCO). Qatar has proposed efficient, lower carbon pollution emitting fuels and technologies. Recently trade sources indicate that many Members do not consider natural gas, as proposed by Qatar, an environmental good owing to its high methane content. Qatar on the other hand has referred to the Kyoto Protocol and the climate change mitigation potential of natural gas and related technologies. Taiwan and Korea's submission reportedly focuses on pollution control equipment.

In its submission on modalities (TN/TE/W/38), the US has proposed a 'core-list' (on which consensus exists) and a 'complementary list' for which individual countries could

nominate products and which would enjoy a wide degree of support. Faster liberalisation 'envisaged' for core-list products (zero tariffs by 2010) and liberalisation of a minimum of x percent on goods in the complementary list (which Members could choose).

Despite a lack of proposals on specific goods, Members such as Kenya and other African countries (TN/MA/W/40) have stated their comparative advantage in environmental products based on agriculture.

China has also put forward a proposal calling for a 'common list' including environmental goods of export interest to both developed and developing countries. It further proposes a 'development list' that would be derived from the common list and comprise goods eligible for special and differential treatment in the form of lower levels of reduction commitments for developing countries. (TN/TE/W/42). According to China, the exemption would enable the reflection of the principle of less than full reciprocity, taking into consideration the needs of economic development in developing countries and the vulnerability of their relevant domestic industries in the area of environmental goods. China has also stressed the need and importance of facilitating technology transfer to the developing and least-developed country Members when working on trade liberalisation on environmental goods. In the course of discussions, the EU also mentioned the possibility of including environmental goods relevant to biodiversity.

The EU has noted that Members in addition to submitting their proposed lists might want to consider the principles or as proposed by New Zealand (TN/TE/W/46) the environmental justification underlying their decision to include certain goods. Such principles could relate to the classification of goods under the Harmonised System (i.e. codes used by customs officials), non-tariff barriers, or goods with multiple end-uses. The US and many other Members reportedly favour a more concrete discussion as opposed to one on principles. The Secretariat has also sought to involve relevant international organizations working on the issue such as UNCTAD and the World Customs Organisation (WCO) and invite them to contribute to the discussions at CTE special sessions. At one of these meetings for instance, the WCO representative highlighted some of the difficulties that might arise when including environmental goods in the Harmonised System. According to the WCO representative, the harmonized system only distinguished between products based on their physical characteristics, and therefore did not lend itself to denoting goods depending on the process and production methods (PPM) used or on their end-use (i.e. environmental or otherwise)

New Zealand's submission on a list of environmental goods has stressed the importance of attaching a 'reference point' to any item on a list of environmental goods tabled at the WTO. This, according to New Zealand, was a way of initiating a discussion on the 'environmental credentials' of a particular good and to serve as a screening mechanism for products to ensure that it met a basic threshold. However the use of a reference point would not guarantee their inclusion as an environmental good in any final list agreed upon by the WTO. This would be subject to further discussion. The New Zealand list includes the OECD definition of environmental industries and APEC's conceptualisation of environmental goods as reference points. The list submitted by New Zealand includes among others, environmentally preferable products based on 'end-use' or disposal characteristics such as organic fertilizers, soaps made from natural oils and jute bags. Given the dynamic and evolving nature of the sector therefore and the fact that it is continually developing in new and often unexpected directions, New Zealand also stressed the need to ensure that any list developed at the WTO should be considered a 'living list'.

Environmental Services

Within the services dimension, WTO negotiations towards further liberalisation of environmental (and other) services began before Doha as part of the so-called 'built-in agenda' agreed during the Uruguay Round. According to Article XIX of the GATS, Members had to start discussions on negotiating formats and procedures in 2000.

The Negotiating Dynamics: Key Issues and Fault-lines

Unlike certain other services such as telecommunications, for instance, environmental services in have witnessed slow progress both in terms of 'depth' of market access commitments, the number of countries that have made commitments, particularly developing ones as well as the number of sectors and modes covered. These may in large part be attributed to the factors mentioned below.

Classification Issues

The WTO Services Sectoral Classification list (W/120) is based on the UN Provisional Central Product Classification. There have however been a number of proposals by Members who consider that it needs updating. In a submission as early as 1999 (C/CSC/W/25), the EU stated that the list did not, for instance, reflect changes in the environmental industry which was developing beyond traditional end-of-pipe/pollution control/remediation/clean-up towards integrated pollution prevention and control, cleaner technology and resources and risk management. The EU has proposed an alternative classification comprising 'core' services which can undisputedly be classified as "purely" environmental and where the services are classified according to the environmental media (i.e. air, water, solid and hazardous waste, noise etc.). Thus the mutually exclusive character of the W/120 list is preserved. In addition, subsequent EU submissions in 2000 (S/CSS/W/3 and S/CSS/W/38) also propose a 'cluster' approach whereby conceptual services such as design, engineering, R&D and consulting services which have an environmental 'end-use' would be subject to a special 'cluster' or 'checklist', whereby the checklist would be used as an aide-memoir during the other sectoral negotiations. Commitments for these 'end-uses' could thus be scheduled within relevant GATS sectors other than environment.

Colombia for instance, while accepting the EU classification as a working basis, has added three more services: (i) the implementation and auditing of environmental management systems; (ii) the evaluation and mitigation of environmental impact; and (iii) advice in the design and implementation of clean technologies. (S/CSS/W/121) Some delegations have cautioned against Members making unintended commitments in a number of other sectors while liberalising under the 'cluster approach'.

Presently Members are free to make use of their own classifications. It appears that multilaterally accepted classification issues could only be worked out within the WTO Committee on Specific Commitments. Discussions currently are at a standstill in the Committee.

Environmental infrastructure services and the issue of water

According to some experts, foreign commercial presence through Mode 3 (commercial presence) could help ease the constraint on domestic resources in developing

country provision of safe water as well as treatment of polluted water. Many see the GATS as a suitable instrument to offer binding and predictable market access for foreign investment in this sector. Others however question the value of such participation particularly as it raises issues of affordability to poorer sections of the population as well as fears about private ownership and control of water.

These fears were heightened when the EU in its classification proposed “water for human use and wastewater” for inclusion under ‘environmental services’. While water is in theory open for negotiations at all times, the proposal marked a shift away from the W/120 classification which does not address water at all and mentions only sewage treatment and tank emptying. It appears certain that it was “water for human use” rather than “wastewater treatment” that sparked these concerns.

General obligations under the GATS such as the most-favoured nation or national treatment do not apply to ‘services supplied under government authority’ that are not supplied on a ‘commercial basis’ or in ‘competition with other service suppliers’. (Article I: 3). In the case of water supply, for instance, only if the sector already has private actors (including domestic ones) or the sole state entity in charge supplies water on the basis of commercial considerations, would a WTO Member be required not to discriminate between water supply service providers from different Member states or grant them the same treatment as domestic entities.

Assuming that private participation and commercial considerations do exist in the delivery of environmental infrastructure services, Members may wish to preserve regulatory ‘policy space’ and incorporate adequate safeguards in their GATS commitments so as to facilitate other models for ‘delivery of water’ and the use of policy instruments, such as subsidies or tax incentives. Disciplines on subsidies as well as government procurement in services have yet to be negotiated.¹ Discussions, for example, in the Working Party on GATS rules and the Committee on Government Procurement have discussed various kinds of contractual arrangements, such as Build Operate Transfer (BOT). Some of these, it is argued, are actually a combination of government procurement and market access concessions. Any future disciplines on government procurement and subsidies could have implications for market access commitments already made. Presently many countries have stated that they would prefer not to make liberalisation commitments in water without understanding the implications of liberalisation particularly on access of water to the poor.

Domestic Regulations and Disciplines yet to be negotiated

Detailed knowledge of domestic regulatory and administrative regimes will be relevant for trade negotiations in environmental services as in other services. This is because domestic regulations touch upon provision of services through Mode 3 (commercial presence) and 4 (movement of natural persons) through foreign investment, health, environmental and immigration and intellectual property rights laws and regulations etc. While Article VI disciplines under the GATS have a limited impact on public services, experts believe that future negotiations under Article VI: 4² of GATS may influence domestic regulation on public services. Article VI (4) of GATS dealing with Domestic regulation states “With a view to ensuring that measures relating to qualification requirements and procedures, technical

standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.”

WTO Members should therefore assess ongoing negotiations in the WTO Working Party on Domestic Regulation in the light of their regulatory requirements.³ Disciplines on safeguards, subsidies and procurement mandated by GATS Articles X, XIII and XV have yet to be developed. According to the Guidelines and procedures for the negotiations On Trade In Services (S/L/93- 29 March 2001), negotiations on safeguards under Article X shall be completed by 15 March 2002. According to the Decision adopted by the Council for Trade in Services on 1 December 2000, Members shall aim to complete negotiations under Articles VI: 4, XIII and XV prior to the conclusion of negotiations on specific commitments (under market access).

Environmental services of export interest to developing countries

The OECD classifications as well as various other proposals on the classification of environmental services reflect sectors where developed countries enjoy a comparative advantage, as many of these sectors are capital and technology-intensive. However, many developing countries are interested in market access for environmental services that they could possibly export, particularly in Mode 4. Cuba for instance, where environmental service segments such as studies, assessments and consultancy services are particularly well developed, has exported such services to Brazil, the Dominican Republic, Haiti, Mexico, Nicaragua, Spain and Venezuela. Assessing the opportunities in this sector will however imply an assessment of the impact of foreign immigration regulations that are a part of domestic regulation as mentioned previously, as well as other requirements such as quality assurance and educational requirements. Provision of consultancy services through Mode 1 (cross-border supply) could also hold out opportunities for developing countries for export of environmental services.

State-of-play in WTO Environmental Services Negotiations

The Doha Ministerial Conference set deadlines for submitting requests (June 2002) and offers (March 2003), which were not met by most Members, as well as for concluding the talks in 2005.

In Services, the 1st August Decision merely “..takes note of the report to the TNC by the Special Session of the Council for Trade in Services and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate.” It also provided for the General Council's adoption of the recommendations agreed by the Special Session and set out in Annex C of the Decision for pursual of further services negotiations. It calls for revised offers to be tabled by May 2005 thus going beyond the original Doha declaration deadline of

1 January 2005. Paragraph D of Annex C in particular states that “..Members shall aim to achieve progressively higher levels of liberalization with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4.”

Currently, most developing countries have received requests to undertake specific commitments in all environmental services, principally from developed countries. Some WTO Members have incorporated new commitments or improved existing commitments: out of 26 initial offers, nine have incorporated environmental services (UNCTAD, 2003b).

For instance, El Salvador has made commitments in the sub-sector of ‘cleaning services for exhaust gases, noise abatement, nature and landscape protection services and other environmental protection services’.⁴ Of the 26 initial market-opening offers, nine have incorporated environmental services. The US for instance has opened up its noise/vibration abatement services in all four modes of supply while the EU has offered horizontal commitments to environmental services in Mode 4. Guatemala has opened up environmental services in Mode 1, 2 and 3.⁵ The opening has been confined to the sub-sector “nature and landscape protection services”. Mode 4 commitments are subject to horizontal limitations. However Guatemala has made the offer subject to the condition that the provision of these services is consistent with ‘national policies on the development and maintenance of natural resources and biodiversity’.

Cross-cutting Issues

In addition, there is also the need to adopt a coordinated strategy between environmental goods and services, as they are frequently inter-linked. At present Members have not agreed to adopt a single strategy within the context of the WTO negotiations but will reportedly tailor individual strategies to respond to specific country interests in both goods and services negotiations. Some experts have suggested that Para 51 that calls upon the CTE and CTD (Committee on Trade and Development) to identify and debate the environmental and developmental aspects of the Doha negotiations should play a more useful role in this regard.

Conclusion: Trends and Future Outlook

The outlook for trade liberalization in EGS driven by the WTO Doha mandate remains cautious and uncertain despite the impetus to negotiations provided by the 1st August decision. Lists submitted so far have focused mainly on ‘end-of pipe’ equipment and remedial technologies. The ‘environmental’ and (as proposed by China on a ‘development’ list) developmental justification will need to clearly spelt out by WTO Members. Recently trade sources indicate that many Members do not consider natural gas, as proposed by Qatar, an environmental good owing to its high methane content. Qatar on the other hand has referred to the Kyoto Protocol and the climate change mitigation potential of natural gas and related technologies. Environmental justification that may involve an evaluation of various types of PPMs and other environmentally sound characteristics of EPPs could prove even more challenging. That said, effective market access for ‘environmental goods’ however defined,

that developing countries produce is imperative in order to make EGS negotiations doubly attractive for many developing countries. With regard to 'agricultural-based' environmental goods, no decision has been made of if and where these goods will be negotiated.

Very few commitments by developing countries have been made in environmental services and is, according to several delegates largely attributable to prevalent uncertainty particularly on regulatory autonomy in key services such as water supply. This is despite the growing need for environmental services in all developing countries in general particularly in rapidly growing countries such as China. Moreover the rapidly growing environmental service industry in developing countries such as those based on consultancy and Mode 4 need to be reflected in the market access commitments of developed countries.

According to some experts, EGS negotiations are in no way isolated from the rest of WTO trade negotiations and the momentum of progress may well depend on the gains made in other areas of negotiations. Any substantive agreement reached on other significant negotiating agenda items, such as agriculture, in the 1st August Decision may give some sort of momentum to negotiations on EGS. Any such momentum may also strengthen widely-held views amongst the trade community that EGS negotiations reflect the 'give and take' bargaining approach across different negotiating sectors that are characteristic of the WTO 'Single-Undertaking Package'.

Most delegates, when asked, concede that concessions can always be made, if Members so wish, in sectors of export interest to developing countries whether these are formally classified as environmental goods or not. In other words the Para 31 (iii) mandate is largely symbolic and there is no restriction on concessions being made in any relevant negotiating group whether NAMA, Services or Agriculture. Others point out the highlighting of EGS under Para 31 (iii) implies an earlier, faster, deeper and rate of trade-liberalisation relative to 'other' goods and services. As things stand, the mandate is still fresh clay that can be moulded as WTO Members desire, although whether more light will be shed and progress achieved on these issues by the time of the Sixth Hong Kong Ministerial Conference remains an open question. One can only hope that when it finally takes shape, the clay will be meaningful for sustainable development in all its three pillars.