

TRADE AND ENVIRONMENT

A RESOURCE BOOK

Edited by
Adil Najam
Mark Halle
Ricardo Meléndez-Ortiz



International Centre for Trade
and Sustainable Development



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Environmental Goods and Non-agricultural Market Access

*Nathalie Bernasconi-Osterwalder, Linsey Sherman
and Mahesh Sugathan*

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The relationship between the environment and trade liberalization in industrial goods is complex and of great interest to the trade, environment and development communities. Literature and impact studies point to the negative environmental impact of liberalization in forestry, fisheries and minerals in the absence of sound environmental policies. At the same time, liberalization may have environmental benefits. Tariff barriers on processed or value-added products are in general much higher than the raw natural resource exports from which they are derived. As a result, many developing countries have exported large quantities of natural resources for the sake of relatively little export revenue. Reducing high tariffs on processed, value-added products could ensure that developing countries earn more through their exports at a lower cost to their natural resource stocks.

Non-tariff measures (NTMs, referred to in the negotiations as **non-tariff barriers** or NTBs) used by developed countries that often fulfill important environmental or health policy objectives continue to be perceived by developing countries as significant trade barriers to their exports (particularly for fishery and forestry products). Developing countries, on the other hand, generally apply

high tariffs on manufactured products. Hence, the focus of attention for developed countries in market access negotiations is often tariffs, while for developing countries it is NTMs. The exception is developing country demands for the elimination of extremely high tariffs on particular tariff lines (**tariff peaks**) and higher tariffs for higher value-added products (**tariff escalation**) in developed country markets.

Many studies also point, in particular, to the benefits of eliminating barriers to imports of so-called “environmental goods.” There is an ongoing debate, especially within the context of World Trade Organization (WTO) negotiations, on the scope of what constitutes environmental goods. While developed countries enjoy a comparative advantage in the production of industrial environmental goods used for environmental remediation, and argue for the definition to include these products, many developing countries are interested in including **environmentally preferable products** (EPPs). However, the standards these products might have to meet to qualify as “environmental,” such as certification, standardization and labelling, might impose equivalent costs and could be construed as barriers to trade.

Relevant WTO Negotiations

The Doha Ministerial Conference in 2001 mandated the WTO Committee on Trade and Environment (CTE) to launch specific negotiations on trade and environment including on the reduction or elimination of tariff and non-tariff barriers to environmental goods and services (EGS) under Paragraph 31(iii) of the Doha mandate. This is an entirely new issue for the WTO and it establishes a direct link between negotiations in the CTE and in the Negotiating Group on Market Access (NGMA) on industrial goods (or non-agricultural market access, NAMA). (See related discussion on *Environmental Services*.)

Negotiations relating to NAMA are primarily taking place in the NGMA, where much of the discussion in the negotiations has centered on cutting tariffs. In that context, discussion has focused on variations of different formulae that, if agreed, would then be applied by Members to systematically reduce their current tariff levels. The type and construction of the formula has been a point of controversy and WTO Members have been divided on the issue largely, but not exclusively, along developed-developing country lines. In addition, small groups of countries have begun additional “informal” negotiations on the complete elimination of tariffs in specific sectors, including environmentally-sensitive sectors, such as forestry and fisheries.

The second significant aspect of current NAMA negotiations is the discussion related to NTMs. At the insistence of developing countries in Doha, NTMs were included in the negotiations on NAMA, both to address the use of non-transparent NTMs in developed countries and to counterbalance the effects of reducing their own tariffs. In the negotiations on NTMs, Members have been requested to notify those measures problematic for their exporters to the NGMA. Several Members, from both developed and develop-

ing countries, have notified various environmental, safety and/or health standards as barriers to their exports. It is important to note that these notifications are not intended to indicate whether or not measures are perceived as illegal or whether or not they pursue legitimate public policy objectives. Notification simply reflects the perceived restrictive effects on trade of these measures.

Interests and Fault Lines

Tariff Negotiations: Sectoral Agreements

Although sectoral agreements for tariff elimination have generally been opposed by developing countries, this process has moved forward informally amongst interested Members, such as the United States, New Zealand and Thailand. Most developing countries have not considered it to be in their interest to scatter tariff negotiations into individual discussion groups on a sectoral basis. However, it is expected that a small group of countries will agree to eliminate tariffs in a variety of sectors, which they will present to the NGMA as finished deals. In this case, the benefits would be extended to all Members, although the commitments would only be binding on the small group of countries involved. Sectors that have been proposed for accelerated liberalization also include a number of environmentally-sensitive sectors, such as fisheries, forestry products, chemicals and raw materials.

There are no indications that WTO Members are taking environmental considerations into account as they engage in tariff elimination negotiations in sensitive sectors in the NGMA. This, despite the fact that some evidence exists to show the likely negative environmental impacts some countries will experience as a consequence of complete tariff elimination. For example, the European Union commissioned a sustainability impact assessment (SIA) of the WTO negotiations, released in June 2005, which focused, *inter alia*, on liberalization of the forestry products sector. Using a model scenario of full liberal-

ization (zero tariffs), the SIA study predicts that developing and some transitional economies that have problems with forest governance could face significant social and environmental costs, which could outweigh any economic gains from additional trade liberalization in the absence of adequate safeguards.

While some proponents of sectoral agreements argue that increased economic activity will allow developing countries to reinvest in environmentally sound infrastructure, the EU SIA finds that complete liberalization is more likely to magnify existing policy and institutional strengths and weaknesses rather than drive forest governance change. During the course of discussions at the WTO, some Members have been in favour of full liberalization of all raw materials, citing “win-win” opportunities for exporting countries through increased market access, and for industrialized countries through cheaper raw materials for processing industries. Others, for instance Japan, have recognized the potential dangers posed to conservation by liberalization of raw materials, such as fisheries and forestry products.

Currently, only a few countries, such as Canada, the United States and the European Union, regularly conduct **environmental impact assessments** of trade negotiations and agreements. In most cases, assessments undertaken with respect to developed countries find that these countries have sufficient domestic regulatory frameworks in place to counterbalance any negative environmental effects in sensitive sectors. However, many developing countries do not yet have the resources to develop strong regulatory schemes and their domestic environment may be unduly affected by the sectoral tariff liberalization being promoted by developed country trading partners.

Non-tariff Measures Negotiations

Since agreement on the “July Framework” in 2004, the Chair of the NGMA conducted a

Liberalization of environmental goods: A double-edged sword or a panacea?

By Beatrice Chaytor



When I first wrote about the issue of environmental goods and services in 2002, my premise was that the negotiations could serve as a model for so-called “win-win” scenarios in the trade and environment debate. Wins for both environment and trade objectives and wins for both developed and developing countries. A third win—for development—was seen as possible through the generation of new markets in environmental goods and services. A few years down the line, however, the negotiations continue without much progress, mired in clashes over definition and classification.

Win-win scenarios are still possible following the liberalization of environmental goods in particular, but all World Trade Organization (WTO) Members must find viable economic and environmental interests in the negotiations. Firstly, the lists put forward by the Organisation for Economic Co-operation and Development (OECD) and the Asia Pacific Economic Cooperation (APEC) forum must be updated to reflect the current state of the environmental goods industry, and include environmentally preferable products (EPPs). In this way, developing countries can use the update exercise as a way of mainstreaming some of their core interests in the multilateral trading system; the focus on development and equity with technology transfer and capacity building as essential aspects of the negotiations.

Secondly, the definitional discussion is superficial if it fails to substantively address some of the most critical issues at the heart of the trade and environment debate: such as “like product,” process and production methods (PPMs) and eco-labels. Naturally, there is wariness about the consideration of PPMs in

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broadening the definition of environmental goods; this could be the slippery slope to the entry of PPMs generally in trade and environment issues and into the WTO. At the same time, liberalization of environmental goods may present considerable gains in international trade for some developing countries. Moreover, these gains would not just be restricted to traditional areas, such as organic or sustainably harvested goods.

Developing countries must surmount the psychological hurdle of PPMs and be strategic in defining their interests within the negotiations. In what products do they have specific comparative advantage? What distinguishes those environmental goods from other products? What specific trade barriers are faced by categories of these environmental goods? Are they tariff or non-tariff barriers? PPMs should be tackled head on as a useful tool for creating space for comparative advantage, particularly where there is a widening of the scope and definition of environmental goods. Developing countries must decide how to advance their desired outcome at both the national and international levels. They should achieve their "wins" one step at a time, taking a medium to long-term view.

At the national level, what particular environmental issues need addressing? For instance, with respect to cleaner energy, water treatment, air purification and fuel efficiency. Can these issues be addressed through the use of environmental goods? If so, those environmental goods need to be assigned customs codes at the national level to distinguish them from other products. At the international level, developing countries across the economic spectrum must participate fully in the World Customs Organization (WCO) to harmonize these national codes to ensure that environmental products for which developing countries have a competitive advantage are included in the various classifications. For example, products dealt with under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal have already being included in customs codes developed by the WCO.

That said, things are not that simple, especially where huge economic interests are at stake. There is general consensus that the environmental industry in OECD countries is well organized, with a fairly mature industry in traditional environmental goods. The entry into force of the Kyoto Protocol will only add to the demand for cleaner energy and energy/fuel efficient products that will widen the market for such goods. Add to this the rise of biotechnology products and the environmental goods industry potentially widens. Industry analysts suggest that OECD countries will not dominate the environmental goods industry for long. Some countries in Latin America and Asia are already competitive in technology that addresses air pollution, health and sanitation and water quality. I would hazard a guess that, even if the definition of environmental goods is restricted to the narrow OECD-APEC lists, the more advanced developing countries are still likely to emerge as the biggest winners in the environmental goods trade. Even though the vast majority of least developed countries do not yet have well developed markets or industry in such products (making them "slow winners" in this trade), South-South trade in green products would enhance the wins among a wider group of developing countries.

All WTO Members need to take a realistic look at the liberalization of environmental goods that is underway. The industry, far from exhibiting the static nature inherent in the APEC and OECD lists, is a fast moving, dynamic sector that has the potential to allow some countries to leap frog the current technological divide, contrasting the impasse in the WTO with the dynamism of the environmental goods industry. Developing countries have a lot to play for here. While they discuss widening the definition of environmental goods in the WTO and work on harmonization of customs codes in the WCO, developing countries should make sure that the domestic regulatory and market environment exists for their products (whether technological or otherwise) to remain competitive and innovative.

Beatrice Chaytor, from Sierra Leone, served as a trade negotiator for her country and is now the Director of the Policy, Planning and Research at the Sierra Leone Ministry of Trade and Industry. This essay is written in her personal capacity.

notification exercise in which Members were invited to notify NTMs that hindered their exports in various markets to the NGMA. The notification exercise has been perceived to be extremely difficult and complex for many, especially smaller, developing countries. As a result, many developing countries have not notified the NTMs that are problematic for their industry and, therefore, the overall picture of notifications is not representative of developing country concerns.

Several proposals support a horizontal approach to negotiations, which would have Members discuss several selected NTMs across all sectors. Some Members, however, have strongly advocated a vertical approach, according to which Members would focus on NTMs of interest to particular industries. This suggestion could be problematic for some developing countries that do not want to establish any formal link between a vertical approach in NTMs negotiations and the possibility of sectoral initiatives in tariff formula negotiations. Those Members supporting a vertical approach to modalities favour the use of plurilateral group discussions, with the results to be applied on a **most favoured nation** (MFN) basis. In other words, a small group of interested countries would decide to address NTMs in a particular sector and then apply the benefits of these new rules to all Members (although those not party to the discussions would not be bound by the rules). Additionally, others have proposed that NTMs covered in existing WTO agreements, such as the Agreement on **Technical Barriers to Trade** (TBT), should be addressed through dispute settlement as a “compliance” issue and not through negotiations. Their argument is that the NTMs faced by exporters in practice sometimes occur because Members are not appropriately implementing their commitments.

Some of the NTMs that have been identified as problematic to certain industries and notified to the NGMA are important tools for domestic environmental policies. For

Are environmental goods good for the South?

By *Amb. Magda Shahin*



After over a decade of relentless efforts and difficult negotiations, discussion on the relationship between trade and environment in the WTO seems to have entered a vicious circle, which—if it goes out of control—could very well undermine the “Doha Development Round.” Although the ongoing debate has not brought the key concerns surrounding the relationship much closer to being resolved, it has helped clarify the underlying rationale and purpose of the issues involved.

Before the Doha Ministerial Conference in November 2001, developing countries had never shown interest in giving additional ground to the environment in the trade debate, least of all in a round that is supposed to be, at least by proclamation, a development round. It had seemed clear that the trade and environment debate in the WTO, with its ten item agenda mandated at the Singapore Ministerial in December 1996, was leading nowhere. Had it not been for the maneuvering of the Nordic countries, the trade and environment relationship would have remained a forlorn issue in the WTO. Disregarding altogether the ten items on the agenda of the Committee on Trade and Environment (CTE), the three items in Paragraph 31 of the Doha Ministerial Declaration were carefully negotiated into the “Doha Development Agenda.” The real innovative addition was sub-paragraph 31(iii), which calls for the reduction or elimination of tariffs and non-tariff barriers to environmental goods and services.

The issue was force-jumped into the front seat, and negotiations on the reduction of tariff and non-tariff barriers became a priority. With the inclusion of this topic, WTO Members agreed to venture again into a cycle of endless debate between environmentalists and

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business interests, who want to see as broad a definition as possible for environmental goods, and “developmental tradists,” who resist enlarging the definition. The basic question that remains unanswered, is: Why should developing countries legalize preferential trade in terms of zero tariffs for environmental goods?

Even if the narrow definition of environmental goods prevails and they are defined according to end-use criteria based on a process and production methods (PPM)-free rationale, the complexities attached to favouring environmental goods as exceptions would tilt the entire market access debate in favour of developed countries. It is worth recalling that the original intention of bringing market access and competitiveness concerns into the interface between trade and environment was to balance an already lopsided debate. With the market access component of the debate now focused on environmental goods and services, to the predominant interest of developed countries, the objective of the former market access discussions (under Item 6 of the Marrakech Agreement agenda for the CTE) have been rendered void and futile.

With the objective of safeguarding the interests of developing countries—which have refused any automatic linkage between trade liberalization and environmental protection—Item 6 was the only item on the CTE agenda stressing the link between trade, environment and development and the inter-relatedness between poverty and environmental degradation. It was intended to promote goods and services of export interest to developing countries, with a view to promoting developing country participation in the trading system and enabling them to protect their environment and improve their capability to implement sustainable development.

Importantly, the concept of environmental goods is relative. What may be defined as an environmental good in one country could be treated very differently in another. Developed country recycling regulations, which discriminate against environmentally friendly and biodegradable products from developing countries, remain a valid example of the subjectivity of the concept. Moreover, using the lists forwarded by European and Asian countries as a basis for defining environmental goods is prone to risks, given that these lists are as biased towards the interests of the sponsoring countries. Developing countries should not be lured into accepting different lists at their face value. With regard to environmental services, why should developing countries concede on issues related to the services negotiations, when developed countries have not yet budged on the movement of natural persons—the so-called Mode 4 supply of services—which constitutes the priority issue for developing countries?

On the whole, Doha Round negotiations seem to be in a state of flux. Environmental goods are not necessarily good for developing countries. A case has not yet been made for why this issue merits priority in a development round. Maybe not coming to a conclusion on this issue would not be a bad thing. At this critical juncture of the negotiations, we should avoid detracting the development round with issues that do not help integrate developing countries in the multilateral trading system.

Ambassador Magda Shahin is Egypt's Assistant Foreign Minister for International Economic Affairs and earlier served as her country's Ambassador to Greece and its chief trade negotiator. This essay is written in her personal capacity.

instance, the United States has notified policies that promote fuel efficiency, distinguishing between vehicles based on engine size, while China has notified regulations that promote energy efficient policies for household appliances, air conditioning units and heating, as implemented for instance in the EU. Bringing such a broad range of measures into the NAMA negotiations could weaken existing environmental standards and limit Members' ability to adopt new legislation for legitimate policy objectives. While this should be avoided, it is also important to recall the objectives of the "Doha Development Agenda;" it is essential that Members address the relationship between legitimate standards and regulations of developed countries, and the lack of capacity of developing country exporters to meet these standards and regulations. In this regard, effective and operational technical and financial assistance will play an important role.

Defining Environmental Goods

The Doha mandate does not provide guidance on the definition of environmental goods, or on the modalities for negotiating tariff reductions. In early 2002, Members agreed to shift the Paragraph 31(iii) mandate on liberalizing environmental goods to the NGMA. However, since there is no clear definition of environmental goods, the CTE in Special Session (CTE-SS) has continued to examine the scope and definitional aspects of this mandate. The most commonly discussed approach to the negotiations is the "list" approach, whereby Members submit lists of environmental goods they wish to negotiate, based on which the CTE-SS would agree on a final list of products to be liberalized. India has suggested an alternative approach, which would classify goods as environmental based on their use in "environmental projects."

Those advocating the *list approach* (primarily the developed countries) propose that, following submissions of goods from Members, the CTE-SS would negotiate a final list of

goods considered to be environmental. Many advocates of the approach consider this to be the only practical option for coming to agreement on a set of products for which tariffs would be reduced. The Organization for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation (APEC) Forum have produced lists of environmental goods, from which many WTO Members have drawn in drafting their proposals. However, many developing countries have raised concerns about focusing exclusively on these lists, particularly since they were created largely by developed countries and do not contain products of export interest to many developing countries. Another criticism of the list approach is that it focuses on goods with an environmental end-use only, and does not include goods produced in an environmentally sound manner.

UNCTAD has done extensive work, outside the context of the WTO negotiations, on a category of goods described as environmentally preferable products (EPPs), which has generated substantial discussion. Although an agreed definition has yet to emerge, UNCTAD defines EPPs as "products that cause significantly less 'environmental harm' at some stage of their life cycle than alternative products that serve the same purpose." Brazil, Switzerland, New Zealand and the European Union support including EPPs within the list framework. Members that are supportive of a narrow list argue that broadening the definition would result in the inclusion of "multiple-use" products, which could be used for both environmentally sound and destructive purposes.

Given rapid technological advances, there is also concern that a static list of environmental goods could become obsolete in a few years. Therefore, New Zealand and the EU have proposed the concept of a "living list," to which products could be added and deleted as technology evolves. The fact that "environmental friendliness" is a relative concept poses potential problems, especially where

superior substitutes exist or may be used in the future. For instance, some experts believe that if hydrogen evolved into a fuel for popular use, natural gas would have less claim to be considered an environmental good. Yet, once tariffs for natural gas have been eliminated, it would be difficult to raise them again.

Some developing countries have also noted the lack of **special and differential treatment** provisions in current list approach proposals. Cuba has outlined areas where development concerns are not being taken into account in the CTE-SS discussions and formally supports a proposal from China, which suggests a “common list” of goods and a “development list,” “which comprises those products selected by developing and least-developed Members from the common list for exemption or a lower level of reduction commitment.” New Zealand has also proposed a “dual list” approach, supported by the United States, with a core list applicable to all Members and a complementary list, from which Members would self-select an agreed percentage of products for tariff reduction.

The reality is that most developing countries lack a comparative advantage in traditionally defined environmental goods that are capital or technology-intensive. In many cases, **process and production methods** (PPMs) would be the only criteria for including such products of export interest to developing countries. However, most WTO Members, particularly developing countries, want to avoid using PPM criteria to define EPPs, partly based on the fear of setting a precedent for introducing this concept in the WTO.

India’s *environmental project approach* was presented as an alternative to the list approach; it would define environmental goods based on their use in a given environmental project. National authorities would grant projects “environmental” status for a set period of time, during which tariffs and NTBs would be reduced on designated goods for use in the project. This would be a continuous process,

as new projects become designated “environmental” and existing projects are terminated. The CTE-SS would formulate the criteria that a designated National Authority could use to screen projects for approval.

Many developing countries support a project-based approach, largely because it solves the problems associated with multiple-use products and directly addresses special and differential treatment for developing countries. They argue that the mandate from Doha is essentially environmental-benefit oriented, and market access is a means to that objective; not the objective itself. However, some WTO Members are concerned that this approach could prevent small and medium-sized enterprises from benefiting from tariff reductions on environmental goods, because they do not have the capacity to mount large-scale projects, or the resources to engage in possibly complex certification procedures with national authorities. There are also some concerns on the appropriate definition of an “environmental project,” as well as how this would be administered multilaterally on an MFN basis.

Trends and Future Directions

The outlook for multilateral trade liberalization in environmental goods remains cautious and uncertain. Lists submitted so far have focused on “end-of-pipe” equipment and remedial technologies. The environmental and developmental benefits of these environmental goods should be clearly demonstrated. Moreover, negotiators may also need to consider the environmentally sound and developmentally supportive characteristics of EPPs. At the same time, negotiators should specifically focus on increasing market access for environmental goods produced by developing countries in order for developing countries to be fully engaged in, and fully benefit from these potentially important negotiations.

In addition, a transparent negotiating process is essential to assess the environmental trends that are likely to result from proposed liberalization in sensitive sectors, such as forestry and fisheries products, chemicals and raw materials. Negative environmental impacts could be particularly significant in these areas for countries that do not have established structures of environmental governance. Negotiators should take these challenges into account and identify flanking measures or, where necessary, refrain from negotiating further liberalization.

It should also be noted, however, that while WTO negotiations on non-agricultural market access could have major environmental consequences, trade liberalization through autonomous policies and bilateral and regional trade agreements could be just as influential. For example, if a country, such as China, has enormous demand for environmentally-sensitive natural resources and decides to autonomously reduce its applied tariffs regardless of the WTO, this could also have environmental (and developmental) consequences in the exporting countries.

