

**LIBERALIZING ENVIRONMENTAL GOODS IN THE WTO:
APPROACHING THE DEFINITION ISSUE**

Submission by the United States

Paragraph 31 (iii)

1. In Paragraph 31(iii) of the Doha Ministerial Declaration, Ministers instructed delegations to carry out negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services”. During the course of negotiations since the Doha Ministerial, delegations have identified the issue of the definition of environmental goods as a key point that requires further clarification in the process of developing relevant negotiating modalities. Various delegations have pointed to the fact that there is no clear definition of “environmental goods” in the Harmonized System tariff nomenclature. Information has also been circulated regarding attempts by other organizations, notably the OECD and APEC, to create a listing of environmental goods. Of these two, the APEC list was developed in a context and for a purpose that closely mirrors the mandate from WTO Ministers. That is, the APEC list was created in a process involving developing and developed countries with a view to it serving as a basis for trade liberalization in the environmental goods sector.

2. The United States believes that the underlying process and environmental rationale that went into developing the APEC list deserves attention as WTO Members undertake a similar process for identifying environmental goods for purposes of trade liberalization negotiations. Accordingly, we offer the following background information for WTO Members regarding the process by which the APEC list was developed. Irrespective of the specific approach that is ultimately adopted for these negotiations, delegations may wish to consider the lessons learned from the APEC process.

I. REASONS FOR THE LIBERALIZATION OF ENVIRONMENTAL GOODS

3. Before describing how the APEC chose to define environmental goods, it is useful to focus briefly on why it is important to identify and reduce or eliminate barriers that impede trade in this sector.

- Ministerial Mandate: WTO Ministers singled out environmental goods and services for liberalization. Apart from agriculture, no other sector was specifically identified in the Doha mandate for market access liberalization. Ministers directed that these products merit particular attention in terms of tariff and non-tariff barrier liberalization in the Doha Round. A significant liberalizing result in this sector also will help demonstrate to various constituencies, including civil society, that trade liberalization and environmental protection are indeed mutually supportive
- Economic benefits: With the reduction/elimination of barriers to market access and increased trade flows, domestic purchasers, including business and governments at all levels, will be able to acquire environmental technologies at lower costs. The savings

realized will help business and governments to stretch their capital investment budgets further.

- Environmental benefits: Improved access to high quality environmental goods at lower costs should help improve the effectiveness of environmental investment programmes undertaken by business and governments. This can lead to direct quality of life benefits for citizens in all countries in terms of a cleaner environment and indirectly to developing greater regulatory capacity in environmental protection.
- Sustainable development benefits: Liberalization will not only improve the availability of environmental technologies at lower cost, but also will allow locally based, globally competitive industries to expand their market opportunities. As barriers are removed to products for which developing countries have, or develop, competitive advantage, these countries can realize economic growth and development patterns that are more environmentally sustainable over time. Furthermore, liberalization in this sector can assist developing countries in obtaining the tools needed to address key environmental priorities as part of their on-going development strategies, such as those they have identified in the WSSD Johannesburg Plan of Implementation.

II. DIFFERENCES IN APPROACH TO DEFINING ENVIRONMENTAL GOODS - APEC VERSUS OECD

4. The APEC and OECD environmental goods lists were created for significantly different reasons and thus have different characteristics. The OECD list was developed as part of an analytical exercise to define the conceptual scope of the sector. As such, analysts who drew up the list were focused on creating a broad-brush view of goods that could be considered as part of the environment industry. In drawing up the OECD list, analysts were focused on the particular industrial usages for these goods and did not need to focus on practical questions of how the goods they were defining as “environmental” differ from identical or similar products used in other industries.

5. The APEC list, on the other hand, was clearly intended to serve as the basis for tariff liberalization/elimination among participating economies. As such, the negotiators who drew up the APEC list were constrained by a number of practical realities. While these will be discussed in some detail below, these factors included, *inter alia*, questions of customs administration, “dual use” issues, differing national nomenclatures below the HS 6-digit level and WTO legal issues (e.g., like products and process and production methods or PPMs). It was often for these practical reasons that products were left off the APEC list that might otherwise have been worth including from a purely conceptual perspective.

III. WHAT ARE ENVIRONMENTAL GOODS?

6. The APEC list is made up of a combination of goods in the following two categories:

1. Environmental remediation/pollution prevention (e.g., smokestack scrubbers, sewage treatment equipment, solid waste recycling systems). Goods used to clean the environment or to contain or prevent pollution. APEC economies began by concentrating on goods of this type.
2. “Clean technologies” (e.g., solar cells and water heating systems, wind and hydraulic turbines). Goods which are designed for a particular industrial or consumer function whose use or disposal results in lesser impact on the environment than alternative

goods designed for similar functions. APEC economies also sought to include clean technologies proposed by participants.

7. Some WTO Members have also argued that the environmental goods should include goods produced in an environmentally friendly manner (e.g., goods identified on the basis of PPMs). They argue that this would seek to reward industrial or consumer goods produced in a manner that has lower impact on the environment than alternative goods with similar functions. APEC economies did not include goods produced in a manner that is arguably “environmentally friendly” (i.e., differentiated on the basis of PPMs) in the APEC list. The main reasons for not including such goods were the practical and WTO-legal issues surrounding tariff discrimination on the basis of PPM criteria. In the Doha negotiations, there similarly appears to be an overwhelming majority view that WTO rules should not be changed to introduce tariff differentials between otherwise like products solely based upon differences in their method of production.

IV. APEC APPROACH

8. During APEC early voluntary sectoral liberalization (EVSL) negotiations, economies made strong progress in tackling the most difficult definitional issues in developing a list of environmental goods. As discussions proceeded, ideas for dealing with these difficulties in defining environmental goods for purposes of tariff liberalization were evaluated against several criteria.

- (a) Can the product distinctions be practically implemented by customs officials? - Clearly customs officials need to be able to effectively implement liberalized tariff treatment for the environmental goods identified. APEC economies agreed that this precludes the use of end-use certificates, where, for example, importers would certify that pumps were to be used for sewage treatment plants in order to receive favorable tariff treatment, even though the same pumps could equally be used for other industrial purposes. It is noteworthy that ITA participants also rejected the use of end-use certificates in the implementation of liberalized tariff treatment for information technology goods. This practical implementation test also precluded use of goods designated as environmental on the basis of their PPMs.
- (b) Many Harmonized System Tariff headings contain more than just environmental goods - “Environmental goods” are not a discrete section of the tariff code, nor are all goods within a single HS tariff line item necessarily part of the environment industry. Few HS headings at the internationally harmonized six-digit level are comprised uniquely of goods that could be considered part of the environmental industry. APEC economies decided to follow a pragmatic approach based both upon the prevalence of the environmental goods in a given tariff heading and the importance of the good for the environment industry. For example, if all or the majority of a six-digit HS category served an environmental purpose, all products within that six-digit HS category were included on the list. If a minority of products of a six-digit category was environmental, but APEC economies agreed that these products were critically important to the environmental sector, again the entire six-digit HS category was included on the list. This was the rationale for inclusion on a list of what might be viewed as “core” environmental products at the six-digit HS level, including filters to purify industrial emissions into the air and water, sewage treatment equipment, potable water treatment equipment, recycling equipment, etc.
- (c) National HS tariff lines are not uniform below the 6-digit level - In other cases, economies wanted to include a specific environmental good that was best described in terms of the product descriptions found at the narrower, national tariff line level

(i.e., the eight- or nine-digit level, as appropriate). There was still an issue regarding how to address these situations in the APEC list since HS product descriptions are not necessarily consistent at the national tariff-line level. In fact, this issue is not unique to the environment industry, but is a feature of the international tariff nomenclature system. Again, APEC economies chose a pragmatic approach. If economies could not reach agreement at the internationally harmonized six-digit level but still felt that coverage of a specific good was warranted, economies agreed to incorporate environmental products by including the detailed break-outs in their own tariff schedule. Basically, economies would agree, for example, to cover a product like solar cells and leave it up to each individual economy to reflect that coverage in their national tariff schedule in an appropriate manner. This explains the use of “ex” headings in the APEC list.

- (d) What can be done about “dual use” issues? - Goods which are important to the environmental industry often have dual or multiple uses, including non-environmental as well as environmental uses. As in the above example, a given type of pump might be able to be used for sewage treatment or other non-environmental purposes. Given that end-use certificates were deemed to be impractical, APEC economies next faced the question what to do about goods that could be used both for environmental and non-environmental purposes. Here APEC economies made choices to include products that were viewed to be important tools or components for environmental protection.

V. CONCLUSIONS

9. As the United States has said in submissions and interventions in both the Negotiating Group on Non-Agricultural Market Access and the CTE in Special Session, we encourage delegations to consider the APEC list of environmental goods as the starting point for discussions. Such an exercise would allow all Members to benefit from the core lessons learned of previous trade negotiators who found workable solutions to some of the most inherently difficult aspects of environmental goods negotiations. It is in this spirit that the United States submits these highlights and clarifications of the APEC negotiations for delegations that were not involved in that process. The lessons learned in that context could be helpful in informing our current work in the WTO

10. Ultimately, WTO Members must style an environmental goods modality that fits their broad and diverse interests. This includes identifying environmental products of interest to developed and developing countries alike. This should be done in a manner than can be readably implemented by customs officials and that, in turn, will allow for both economic and environmental benefits.
