



# THE CASE FOR AN ENVIRONMENTAL GOODS AGREEMENT



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# THE CASE FOR AN ENVIRONMENTAL GOODS AGREEMENT

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## ABSTRACT

The rising demand for environmental goods and services (EGSs) has been the result of the greater emphasis placed by countries on creating environmentally sustainable economies. Nevertheless, the decade-long negotiations over a multilateral agreement on EGSs have achieved no tangible outcome. Therefore, the plurilateral scene seems to be a better field for the conclusion of negotiations. This article presents the current state of negotiations and the future challenges.

## INTRODUCTION

Despite the fact that negotiations over a possible classification of environmental goods and services (EGSs) started with the establishment of the World Trade Organisation (WTO), it is the launch of the Doha Round in 2001, also known as the Doha Development Agenda, that has accelerated negotiations. WTO members, being aware of the need to address the rising concerns on the environmental impact of trade, expressed through Paragraph 31 of the Doha Declaration their desire to enhance and expand collaboration in the area of trade and environment, stating that:

*With a view to enhancing the mutual supportiveness of trade and environment, [the Members of the WTO] agree to negotiations, without prejudging their outcome, on: [...] (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.*

Through the dismantlement of trade barriers affecting EGSs, the Members aimed to achieve a *win-win* situation by:

1. Facilitating trade by reducing or eliminating tariffs and non-tariff barriers (NTBs), which will encourage the use of environmental technologies, stimulating innovation, and technology transfer;
2. Enhancing the accessibility of high quality environmental goods, thereby improving the quality of life for citizens in all countries by providing a cleaner environment and better access to safe water, sanitation and clean energy; and
3. Boosting the development of developing countries through trade liberalisation in EGSs by assisting those countries in obtaining the necessary tools to address key environmental priorities as part of their on-going development strategies.<sup>2</sup>

Despite the initial hopes of an early achievement, members have been unable to reach an agreement on the way to conduct the negotiations. "*Technology exporting countries* [emphasised] *tariff reductions on environmental goods. Technology importing countries* [feared] *that results on tariff*

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<sup>2</sup> See WTO - Eliminating trade barriers on environmental goods and services.  
[https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_neg\\_serv\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_neg_serv_e.htm)

*reductions [could not] bring about a proper balance and thus [pursued] what is called project based or integrated approaches”<sup>3</sup>. In addition, two root problems remained: “[first], parties disagreed over the scope of what actually constitutes an environmental good [and second], they also quibbled over the modality through which tariff liberalisation should occur.”<sup>4</sup>*

## PLURILATERAL ENVIRONMENTAL GOODS AGREEMENT

Due to difficulties faced in achieving a multilaterally agreed outcome, 14 WTO members announced during the 2014 World Economic Forum held in Davos, Switzerland, their intention to start negotiations for a plurilateral Environmental Goods Agreement (EGA).<sup>5</sup> The original parties to the agreement were the EU, the US, China, Australia, Canada, New Zealand, Switzerland, Norway, Korea, Japan, Chinese Taipei, Hong Kong (China), Singapore, and Costa Rica. Israel, Turkey, and Iceland joined the negotiations in 2015, raising the number to 17 negotiating parties. The EGA follows the precedent of the also plurilateral Information Technology Agreement (ITA I and II), implying that “*all negotiated reductions in trade barriers would be extended to other WTO members should a ‘critical mass’ be reached (i.e. an agreement among negotiating members)*”<sup>6</sup>.

This idea follows the 2012 Asia Pacific Economic Cooperation (APEC) initiative, according to which APEC nations should reduce import tariffs on a list of 54 environmental goods to five percent or less by the end of 2015, promoting trade worth USD 300 billion in the region. Overall, it has been estimated that global trade in EGS accounts for USD 1 trillion annually.<sup>7</sup>

Unlike the scope proposed in multilateral negotiations, EGA negotiations do not cover environmental services (ESs), nor the elimination of NTBs. This decision might be partially explained by the fact that negotiators are expecting the results of the Trade in Services Agreement (TiSA) negotiations, as many of the EGA negotiating parties are also negotiating the TiSA.

During the development of the multilateral negotiations, many lists of environmental goods had been proposed: “APEC”, “OECD”, and the WTO “Friends of the Environment”, among others. In 2011, a number of developed countries issued a list of 26 products, mostly covering non-controversial environmental goods. In 2011, a “WTO list”, comprising 411 products was elaborated, including the result of 10 year-long negotiations at the WTO.<sup>8</sup> Nevertheless, a series of common patterns were observed. Many of those lists contained products in which the countries had a revealed comparative advantage, at the time they excluded those goods with high tariffs.<sup>9</sup>

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<sup>3</sup> UNCTAD. (2009). WTO Negotiations on Environmental Goods and Services: A Potential Contribution to the Millennium Development Goals. New York.

<sup>4</sup> Wu, M. (2014). Why Developing Countries Won’t Negotiate: The Case of the WTO Environmental Goods Agreement, 6(1) TRADE L. & DEV. 93.

<sup>5</sup> See “Joint Statement Regarding Trade in Environmental Goods”, 24 January 2014, Davos, Switzerland. Available at: [http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\\_152095.pdf](http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152095.pdf)

<sup>6</sup> Flannery, B. P. and De Melo, J. (2015). The State of climate-related negotiations: modest steps in the right direction. Ferdi, Policy Brief, October.

<sup>7</sup> World Bank (2014). The WTO Environmental Goods Agreement: Why Even A Small Step Forward Is a Good Step, 22 October. Available at: <http://blogs.worldbank.org/trade/wto-environmental-goods-agreement-why-even-small-step-forward-good-step>

<sup>8</sup> See WTO – Committee on Trade and Environment in Special Session, Report by the Chairman, Ambassador Manuel A. J. Teehankee, to the Trade Negotiations Committee, TN/TE/20, 21 April 2011.

<sup>9</sup> See Balineau, G. and De Melo, J. (2013). Removing Barriers to Trade on Environmental Goods: An Appraisal, FERDI, March.

Finally, EGA negotiations adopted as a basis the APEC list of 54 products. Nevertheless, the APEC mandate was to explore, if possible, a broader range of products. The final list will probably cover more products, and will be similar to the WTO list<sup>10</sup>.

**Table 1. Average Barriers to Trade in Environmental Goods by Country**

	Tariffs - MFN				Tariffs plus Ad-Valorem Equivalents			
	EGs APEC List		WTO List		EGs APEC List		WTO List	
	Tariff (import weighted)	TRI	Tariff (import weighted)	TRI	Tariff + NTBs (import weighted)	TRI	Tariff + NTBs (import weighted)	TRI
Average "Davos country"	1.3	1.8	2.2	3.4	5.2	14.8	9.3	35.7
High Income Country	2.2	3.1	2.9	3.8	5.8	16.1	6.9	29.1
Upper Middle Income Country	4.5	6.2	8.9	12.5	13.8	25.2	18.6	41.9
Lower Middle Income Country	3.7	4.9	7.5	10.3	30.2	52.2	23.9	40.7
Low Income Country	5.2	6.6	12.8	15.4	40.5	70.2	16.7	33.1

Source: De Melo and Vijil (2014). The "Davos Group" only takes into account the 14 original members.

The intention of the EGA negotiators is to eliminate tariff barriers in those goods covered by the list. Nevertheless, it has been argued that the current tariffs applied by developed countries to those goods are already low. Exclusively considering the goods contained in the APEC list, the EGA negotiators apply an average Trade Restrictiveness Index (TRI) of 1.8%. The TRI applied to the goods contained in the WTO list of EGs is also considerably low, with an average of 3.4%. China and South Korea, on the other hand, with an average tariff of 11.5 and 5.8, are the only countries applying the higher tariffs, being also the only two countries whose tariffs are above 4%.<sup>11</sup> Thus, the impact of tariff reduction, mainly due to the overall low tariff level, even some at duty-free level, might be minimal for many products.

Even if the EGA is successfully concluded and implemented,<sup>12</sup> some root concerns will remain. The first refers to the exclusion of non-tariff barriers from trade liberalisation. Especially, *"anti-dumping (AD) and countervailing duties (CVD), as well as local content requirements (LCRs), have become increasingly popular in the renewable energy space."*<sup>13</sup> According to Cimino and Hufbauer (2014), between 2008 and 2014, the renewable energies sector has been the target of 26 AD cases and 15 parallel subsidies investigations.<sup>14</sup> This is shown in the overall trade restrictiveness index, as indicated in Table 1. Some of the trade remedies applied have been challenged at the WTO Dispute Settlement Body (DSB).<sup>15</sup>

<sup>10</sup> See Transport and Environment (2015), Environmental Goods Agreement. September. Available at: <http://www.transportenvironment.org/publications/briefing-environmental-goods-agreement>

<sup>11</sup> De Melo, J., and Vijil, M. (2014). The Critical Mass Approach to Achieve a Deal on Green Goods and Services: What is on the Table? How Much to Expect, FERDI, June.

<sup>12</sup> See World Trade Online, South Korean Trade Ministry Expects EGA Implementation In 2017, December 01, 2015. Available at: <http://insidetrade.com/content/south-korean-trade-ministry-expects-ega-implementation-2017>

<sup>13</sup> Hufbauer, G., Jung, E., Miner, S., Moran, T., and Schott, J. (2015), From drift to deals: Advancing the WTO Agenda. Peterson Institute Report, June.

<sup>14</sup> Hufbauer, G. and Cimino, C. (2014) Trade Remedies in Renewable Energy: A Global Survey, UNCTAD, Ad hoc Expert Group Meeting on Trade remedies in Green Sectors, Geneva, April 3-4.

<sup>15</sup> For further detail, see, for example, the Panel and Appellate Body Reports on the case US - AD/CVD; Panel Report US - CV/AD Measures, among others.

An additional number of issues must be touched upon in order to ensure the success of the EGA.<sup>16</sup> First, a definition of what an environmental good is must be agreed upon. Previous definitions have been proposed by UNCED,<sup>17</sup> UNCTAD,<sup>18</sup> and the OECD.<sup>19</sup> Second, there is a critical need for expanding the number of parties to the agreement, in order to achieve the critical mass threshold. Despite the fact that the Davos Group encompasses almost 90% of the trade in EGs,<sup>20</sup> the inclusion of developing countries, such as India and Brazil would be one of the key ways to ensure the successful implementation of the EGA. Finally, the liberalisation of trade in ESs would have a big impact on the promotion of trade in EGSs. The exclusion of trade in ESs from negotiations *“was regrettable as trade in Environmental Services and trade in Environmental Goods are complementary. Moreover, estimates of trade barriers in ESs are much higher than those for EGs.”*<sup>21</sup>

## DEVELOPING COUNTRIES PARTICIPATION IN EGA NEGOTIATIONS

Of the more than 100 developing country members of the WTO, only three, namely China, Costa Rica and Turkey, are taking part in the EGA negotiations.

As stated by Wu (2014),<sup>22</sup> a different set of explanations might explain this situation. The classical theory might argue that, on the one hand, as developing countries are involved in some form of infant industry protection, they might not be interested in a trade liberalisation process. On the other hand, the refusal to participate in negotiations might also be seen as a way of expressing their protest against the way negotiations, and the complete Doha Round, is being negotiated, which they consider as only defending the interests of developed countries.

Nevertheless, Wu defends that very few developing countries, other than the ones currently present in negotiations, have significant export interests in the current list of EGs under negotiation. In addition, the existence of the APEC initiative and the liberalisation commitments made under regional trade agreements (RTAs), might have diminished the interests in plurilateral agreements. Finally, developing countries will be able to benefit from the outcome of the EGA negotiations as the commitments made by the negotiating parties will be made on a MFN basis, thus being extended to the rest of WTO Members even if they are not parties to the agreement.

Increasing the number of countries participating in the negotiations will be one of the objectives to be achieved, in order to obtain the necessary critical mass, as mentioned above.

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<sup>16</sup> For the full discussion, please See World Bank (2014)

<sup>17</sup> UNCED, Access, Participate and Participation in Agenda 21, Chapter 34: Transfer of Environ Transfer Of Environmentally Sound Technology, Cooperation And Capacity-building  
<http://www.unep.org/documents.multilingual/default.asp?DocumentID=52&ArticleID=84&l=en>

<sup>18</sup> UNCTAD (1995). Environmentally Preferable Products (EPPs) as a Trade Opportunity for Developing Countries, UNCTAD/COM/70, December.

<sup>19</sup> OECD/Eurostat (1999). The environmental goods & services industry: Manual for data collection and analysis, p. 9.

<sup>20</sup> ICTSD (2014), Securing Climate Benefits in the Environmental Goods Agreement, Biores, Volume 8 – Number 10, 27 November. Available at: <http://www.ictsd.org/bridges-news/biores/news/securing-climate-benefits%E2%80%A8-in-the-environmental-goods-agreement>

<sup>21</sup> Flannery, B. P. and De Melo, J. (2015). *Ib.*

<sup>22</sup> See Wu, M. (2014), *ib.*

## MOVING FORWARD

The idea of an international agreement on environmental goods has been on the negotiators' minds for a long time. As negotiations at the multilateral level proved to reach an impasse, the plurilateral arena seems to be a *prima facie* more convenient scene. Indeed, any agreement promoting and facilitating trade in environmental goods, whatever shape or form it may take, will be beneficial, both from an economic and environmental point of view. Nevertheless, a series of points remain obscure. As mentioned above, there is no consensus on the definition of "environmental goods". All EGA negotiation parties, except China, are currently negotiating TiSA, which might explain the exclusion of trade in ESs from the scope of the EGA. Nevertheless, the linkages between the two are so strong that they should be considered holistically. Another question concerns the negotiation of NTBs. The increasing number of disputes surrounding the use of NTBs and, currently, renewable energy goods, requires further agreement at the plurilateral level.

## ABBREVIATIONS

<b>AD</b>	Anti-Dumping	<b>LCRs</b>	Local Content Requirements
<b>APEC</b>	Asia-Pacific Economic Cooperation	<b>MFN</b>	Most Favoured Nation
<b>CVD</b>	Countervailing Duties	<b>NTBs</b>	Non-Tariff Barriers
<b>DSB</b>	Dispute Settlement Body	<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>EGA</b>	Environmental Goods Agreement	<b>RTAs</b>	Regional Trade Agreements
<b>EGs</b>	Environmental Goods	<b>TiSA</b>	Trade in Services Agreement
<b>EGSs</b>	Environmental Goods and Services	<b>TRI</b>	Trade Restrictiveness Index
<b>ESs</b>	Environmental Services	<b>UNCED</b>	United Nations Conference on Environment and Development
<b>EU</b>	European Union	<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>ITA I-II</b>	Information Technology Agreement	<b>US</b>	United States

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