

ENVIRONMENTAL PROJECT APPROACH – COMPATIBILITY AND CRITERIA

Submission by India

Paragraph 31 (iii)

The following communication, dated 12 June 2006, is being circulated at the request of the Delegation of India.

1. The Environmental Project Approach (EPA) fully responds to the objectives of Paragraph 31(iii) of the Doha Ministerial Declaration, which seeks to eliminate tariff and non-tariff barriers to trade in environmental goods and services. It responds to the objectives in a much more effective and comprehensive manner by adopting an integrated approach to the mandate unlike the “list approach”. The “list approach” is limited to tariff reduction in goods only, and does not address the explicit mandate to include environmental services; it does not address in any manner the issues relating to non-tariff barriers, and comes with the added baggage of being static, needing repeated negotiations and implementation problems due to classification issues.

2. A project-based or sector-specific approach is not new to the WTO. Negotiations during the Uruguay Round addressed specific sector issues, namely in the field of chemicals and pharmaceutical products, medical equipments, and information technology. Recently, the Doha Declaration on the TRIPS Agreement and Public Health is another such negotiation which focused on finding solutions to the public health issues relating to diseases, namely HIV/AIDS, tuberculosis, malaria and other epidemics. The WTO thus provides a regulatory framework to find common solution (like elimination of tariffs) or creates necessary policy space for the Member countries to address the problems unilaterally (such as, by recourse to compulsory licensing of patented drugs). These examples show that Members have been able to address sector specific objectives within the general WTO regulatory framework. The EPA, therefore, is not an exception; rather it is in line with the general structure of the multilateral trading system, providing appropriate answer to address specific environmental problems of the Member countries.

3. It has been argued that EPA does not provide predictability or transparency. In fact, the underlying philosophy of the EPA proposal does address these objectives. EPA will multilaterally define policy space for Member countries for tackling and addressing their environmental problems in a manner which is efficient and commensurate with their needs and levels of development. EPA defines the WTO framework within which Members will undertake and implement specific projects. It seeks to define the boundaries and parameters by which privileged market access can be granted for the products for the environmental projects. EPA will also include the parameters under which such projects can be undertaken as well as the criteria that would be applied by any Designated National Authority (DNA) to determine whether a proposed environmental project qualifies for tariff concessions on environmental goods and services .

4. Questions have been raised about the lack of novelty or additionality offered by the EPA as Members unilaterally undertake and implement environmental projects. Unilateral action by Members does not assure privileged tariff access to other Members. The importance and value of creating an appropriate legal framework in the WTO needs to be recognised in this context. Agreement in CTESS on definitions and criteria of environmental projects would create predictability and legal security to this arrangement. It would not only be able to address global environmental objectives but would also be able to address the individual national environmental goals thus being need-based and objective-oriented. Since the adopted global projects would be as per the CTESS agreement, domestic implementation of the framework would be subject to dispute settlement, as in other areas of the WTO law. Administrative decisions taken can be reviewed along the lines of reviewing determinations of anti-dumping and countervailing measures under the WTO Agreements by the dispute panels and the Appellate Body. This would enable traders to assess conditions for participation and market access. All these legal commitments enhance legal security of the EPA.

5. It must also be noted that environmental goods are in any case included in the product coverage of the ongoing tariff negotiations – both NAMA and agriculture, EPA does offer additional binding tariff concessions. The CTESS would agree on the appropriate criteria, definition, and types of environmental projects. Goods imported for the projects would be eligible for appropriate tariff concessions. This certainly provides predictability to the exporting countries. Member countries implementing such environmental projects would therefore guarantee additional market access on the agreed terms for the duration of the project, which cannot be withdrawn during the period of the project. This binding would also be available for spare parts for the equipment or goods used in the project. This temporal binding of commitments under the auspices of the WTO would be an element of multilateralism. Regarding scheduling of Members' commitments under this approach, the format can be finalized by taking into consideration the different kinds of schedules used in the WTO under different types of agreements, such as the GATT schedules, the GATS schedules, the GPA schedules, etc.

6. The EPA does not conflict with MFN principles of GATT. Specific products would obtain privileged market access without reference to the origin of the product. Such preferential access is not granted on the basis of the products originating in a particular Member country, as in the case of FTAs or Customs Unions, but because it complies with the requirements of the EPA. Products from all Members will equally qualify to compete for the project. The EPA adheres to the MFN principle better than several practices presently followed by Members such as country specific tariff rate quotas, whereby the same product receives different tariff treatment depending on its origin and on the quantity of imports. In any case, Members are entitled to rely upon the criteria relating to the end-uses of products in a given market, to that extent a product used for a specific environmental purpose could be distinguished from the same products used for a different purpose (reference can be made to the Border Tax Adjustment Report of the Working Party, adopted on 2 December 1970, BISD 18/S (1972) Para 18).

7. The EPA is in line with the overall goal and working of the WTO to achieve sustainable development and to bring synergy between trade and environment. The role of the Designated National Authority can be built in a manner so as to provide transparency and access to project-related information. Other legal concerns (if any) can always be taken into account while negotiating an appropriate framework and agreement.
