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AN ALTERNATIVE APPROACH FOR NEGOTIATIONS UNDER PARAGRAPH 31(III)

Submission by India

The following communication, dated 2 June 2005, is being circulated at the request of the Delegation of India.

I. BACKGROUND

1. The Doha Ministerial Declaration (DMD) mandates Member countries to negotiate on *the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services with a view to enhancing the mutual supportiveness of trade and environment*. The intent inherent in this is to bring economic benefits (promote dynamic efficiency in production and greater access to consumption goods at lower prices), developmental benefits (addressing basic human needs in terms of the Millennium Development Goals) and environmental benefits (promote sustainable modes of production and consumption), and achieve gains from trade with improvement in environmental quality so that it leads to "win-win" situations.

2. Following the Ministerial Mandate, identification of environmental goods has been at the core of the negotiation process so far. A number of Member countries and groups have made their submissions. New Zealand has called for a pragmatic approach to the negotiations in which the Members could "define (environmental goods) by doing". It suggested that certain reference points would guide the identification of environmental products.¹ It also expressed a preference for adoption of a "single consensus list" of environmental goods but stated that a dual-list approach could also be considered in the event that agreement on one list could not be obtained. New Zealand also introduced the concept of a "living list" which would allow an agreed list to be updated for technological progress. The EC also urged a "pragmatic" and "innovative" approach. The EC's suggestion is to develop guiding principles for identification of environmental goods, so as to include goods used in pollution control and resource management and goods that have a high environmental performance or low environmental impact.² It suggested that negotiations should define categories general enough to cover all related technology for given purposes. The South Korean submission has presented an initial list of environmental goods which has been created on the basis of criteria viewed by South Korea as "practical" and which could be "broadly accepted and applied by WTO Members".³ Some countries have also argued that the environmental goods can include goods produced in an environmentally friendly manner. The United States (US) attempted to address the environmental goods negotiations in a "creative" and "flexible" manner. It proposed the use of two lists - Core and Complementary. The Core List would deal with two categories: Environmental

¹New Zealand's submission TN/TE/W/46 on 10 February 2005.

²EC's submission TN/TE/W/47 on 17 February 2005.

³Korea's submission TN/TE/W/48 in the CTESS on 18 February 2005.

Remediation and Pollution Prevention and Clean Technologies.⁴ This list, as suggested by the US, would be arrived at by consensus and definite concessions would have to be committed. The Complementary List would contain products on which consensus could not be arrived at.

II. PROBLEMS WITH THE "LIST APPROACH"

3. The discussions in the CTESS over the last three years have been on potential criteria, definitions and classification of environmental goods; but the ambiguity continues. Suggested definitions have varied between "limited primarily to pollution prevention activities" to "extend beyond simply end-use criteria". Though there has been constructive engagement on the subject, there is need to move forward. The Chairperson of the CTESS has also reported to the Trade Negotiations Committee that Paragraph 31(iii) of the DMD would emerge as the most likely candidate for tangible progress for the Hong Kong Ministerial Conference.⁵ But proposals for the composition of the final list show wide divergence of opinion. This is a cause for concern. In fact there is a growing feeling that the direction of negotiations so far have focused on goods which are likely to give highly industrialized countries a comparative advantage.

4. Many of the items suggested for inclusion in the Lists have dual use. Though these items may be utilized for an environmental purpose, other industrial applications of such goods are also significant. Examples include electricity meters, liquid flow meters, heat exchangers, conveyers and centrifugal drums. The list of environmental goods contains equipments, which cannot even be considered to be *predominantly* used for environmental purposes, for example suggestions for inclusion of consumer appliances, such as microwave ovens, energy efficient refrigerators, etc. If preferential tariff treatment, including zero tariffs, is to be given to dual use and consumer goods, there would be significant ramifications for industrial sectors, particularly in developing and least-developed countries where industry is largely dominated by small and medium enterprises (SMEs).

5. Further, most SMEs lack in resources to invest in research. As most environment-related technologies of the developed world are under intellectual property protection, technology transfers either do not take place or come with export restrictions and other conditionalities. Also, these technologies have been developed keeping in view the factor endowments and environmental standards of developed countries, and so are not always appropriate to developing countries.

6. Some developing countries have been promoting growth of indigenous pollution prevention and pollution control enterprises so as to provide low-cost solutions to environmental problems based on standards appropriate to the countries, also taking into account the carrying capacities of the receiving environment and affordability of the SMEs. Development of these enterprises is vital for finding location-specific solutions consistent with the stage of development and also for capacity building. The likely impact of unrestricted concessional duty import of environmental goods and services (EGS) would be highly adverse to the development of these enterprises.

7. Further, merely permitting the flow of a number of goods into a country does not seem to achieve any particular environmental objective. It is too diffused an approach. If environmental ends are to be successfully met, then the approach would have to be more focused.

⁴US' submissions TN/MA/W/18/Add.5 and TN/TE/W/38.

⁵Report by the Chairperson of the CTESS to the Trade Negotiations Committee, TN/TE/11, dated 14 March 2005.

8. Rather than addressing the environmental concerns of developing and least-developed countries, the "List Approach" would expose them to the adverse effects of increased market access and competition without any compensatory benefits, as the duty concessions are open-ended and permanent.

9. Even if the goods included in the list are not dual-use ones, SMEs, which produce a large part of the environmental goods in most of the developing countries, could lose their markets, and be rendered unviable. The long term effects of such an eventuality not just on the economies of developing countries, but also on the sustainability of their indigenous pollution control and environmental upgradation programmes would be adverse.

10. One of the objectives of the WTO is conducting trade with a view to achieving sustainable development by allowing for the optimal use of the world's resources; and the key objective of the Doha Mandate is to ensure the development dimension of the WTO through the results of the Work Programme. Ways and means to address questions relating to environmental imperatives, poverty alleviation, and creation of additional wealth in developing and least developed countries seem to be adversely impacted by the "List Approach".

11. Also, the negotiations so far have primarily been on environmental goods, and the issue of environmental services has not been addressed in a significant manner. The mandate includes environmental goods as well as environmental services. It needs to be emphasized that there are many environmental activities that entail the delivery of services in conjunction with use of goods. The separation of services and goods in a particular environmental activity is difficult, as these are very often integrated. The "List Approach" treats these in a mutually exclusive manner, which is not appropriate.

III. "ENVIRONMENTAL PROJECT" APPROACH

12. In view of the issues involved in the "List Approach" for environmental goods, an alternative approach is proposed, i.e. the "Environmental Project Approach". This approach would address diversity in environmental standards with common but differentiated responsibilities and would bring in trade liberalization to meet the environmental as well as development goals of both the Doha Development Agenda and Agenda 21. Under this approach, a project, which meets certain criteria, shall be considered by a Designated National Authority (DNA). If approved, the goods and services included in the project would qualify for specified concessions for the duration of the project.

13. The projects would be decided by the DNA and could include those aimed at meeting national environmental objectives as well as objectives of any bilateral or multilateral environmental agreement. They would include, *inter alia*, equipment, parts and components, consumables, services, investment, financial aid and transfer of technology. The commitments that Members agree to undertake may include (a) reduction or elimination of tariffs on import of all project related goods; (b) reduction, elimination or appropriate treatment of standards, licensing restrictions, non-tariff barriers and other related issues; (c) specific commitments required in all modes of service delivery.

14. The broad criteria for "environmental projects" could be agreed upon in the CTESS with due consideration to the policy space of national governments. The projects may, among others, include: Air Pollution Control; Water and Waste Management; Solid Waste Management; Remediation and Clean-up; Noise and Vibration Abatement; Environmental Monitoring and Analysis; Process Optimization; Energy Saving Management; Renewable Energy Facilities; and Environmentally Preferable Products.

IV. ADVANTAGES OF THE "PROJECT APPROACH"

15. The "Project Approach" would address the mandated requirements in a cohesive, focused, directed and integrated manner. The commitment of each Member government will be commensurate with clearly identified environmental benefits to be achieved, since the approach is based on a conscious national assessment of both developmental and environmental concerns specific to each Member country by the Member country itself within the broad parameters agreed upon in the CTESS. It is a need-based and objective-oriented approach.

16. Since each project would be contemporary, it will address the changing needs of Members and there would be an incentive to employ the latest technology and products. This, in a way, will be a "living list", as suggested by one Member. This approach is dynamic as it would take into account the evolving nature of environmental technology and equipment and reduce or eliminate tariffs on a contemporary list of goods and services; the list would not be a static one requiring periodic renegotiations for its expansion, as would be the case in the "List Approach". The "Project Approach" meets the suggestion of another Member for a "pragmatic and innovative approach", as it seeks to directly address the concerns for achieving the environmental goals. It is "practical", as suggested by yet another Member. Also, since there is sufficient policy space for the national governments to achieve the environmental objectives, the approach provides ample "flexibility" to the national governments.

17. Since the tariff concessions would be available for goods used in the project for a finite period of time (even if extended), the concerns expressed regarding dual use are mitigated. This also has a significant bearing on the national revenue, particularly from a developing country perspective. Although there will be revenue loss to the Member country due to concessions offered, such loss will be out of a conscious decision, looking at the environmental objectives of the country. The concessions given for the goods and services for the project would not result in any undue leakage of national revenues, because the revenue authorities could effectively address any diversion due to the specific "project" nature of such concessions.

18. Under the "Project Approach", positive measures like capacity building, technology transfer and technical assistance would be strengthened as national authorities would factor them into their decision of designating environmental projects. Since environmental projects could also be a part of infrastructural investment, they would not only result in benefits of capacity building, but also enhance market access opportunities.

19. The "Project Approach" would neither immediately affect the market access schedules of Members nor would continuous negotiations and amendments be needed to accommodate newer environmental goods and services.

20. There is a clear conceptual difference in the tariff reductions and elimination of non-tariff barriers desirable for the mutual supportiveness of trade and environment, and those to be achieved towards greater market access in general. The "Project Approach" exemplifies the former.

21. This is a concept paper and it is recognized that various aspects of the "Project Approach" will need a greater level of clarity than presently offered. We look forward to discussing the issues to further develop this concept.
