

Negotiations Continue on Tariff Reductions for Environmental Goods; Midterm Elections Should Benefit Trade Agenda

February 2015

Negotiations on a new World Trade Organization (WTO) Environmental Goods Agreement (EGA) are proceeding. The Obama Administration's decision in March 2014 to enter into negotiations, and related U.S. negotiating objectives, reflect input from members of the current Congress. The November 2014 midterm elections have given Republicans solid majorities in the House and Senate, which should benefit the EGA talks as well as other trade agreement negotiations in general.

Run-up to Negotiations. On March 21, 2014, the U.S. Trade Representative (USTR) expressed to Congress the Obama Administration's intent to negotiate the EGA as part of an effort to increase U.S. exports and jobs. It also reflected the President's earlier-stated goal "to help more countries skip past the dirty phase of development and join a global low-carbon economy."

The March 21, 2014 notification to Congress followed a January 2014 declaration by 14 WTO Members (Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, and the United States), which together account for 86% of the global environmental goods trade. These countries announced their desire to negotiate an agreement to eliminate tariffs on environmental goods, which are goods needed to protect the environment and address climate change. Late in 2014, USTR announced Turkey's and Israel's interest in joining the negotiations. Written comments were due by January 15, 2015. 79 Fed. Reg. 74,803 (Dec. 16, 2014). Comments on Iceland's potential participation are due by March 6, 2015. 80 Fed. Reg. 4332

Authors

Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law
Maureen E. Thorson
Partner
202.719.7272
mthorson@wiley.law

(Jan. 27, 2015).

In its notification to Congress, USTR also indicated that to ensure that the U.S. negotiating objectives appropriately reflect key U.S. interests and concerns, USTR would intensify consultations over the coming months with Congress and with a wide range of stakeholders. Thus, on March 28, 2014, USTR requested public comment on U.S. interests and priorities regarding an EGA. In addition, the United States International Trade Commission (USITC) launched two related investigations on April 17, 2014. It did so in response to a USTR request letter dated April 2, 2014, which asked the USITC to (1) investigate the probable economic effect of removing duties on environmental goods (TA-131-039) and (2) provide trade information and estimates for a broad, 34-page list of environmental goods (TA-332-548).

The USITC produced confidential reports to USTR.

The WTO Negotiations. On July 9, 2014, the above-stated group of 14 WTO Members formally began negotiations on the EGA. They started with a list of 54 environmental goods for which the Asia-Pacific Economic Cooperation (APEC) agreed to cut tariffs by the end of 2015, and with the possibility of expansion of the list.

On the same day, formation of the National Foreign Trade Council was announced, with a purpose of advocating the timely negotiation of an ambitious EGA, including substantially broadening the list of 54 goods agreed upon by APEC—as well as educating policymakers and the public on the importance of lowering trade barriers to environmental technologies. The Coalition is co-chaired by the National Association of Manufacturers, the National Foreign Trade Council, and the United States Council for International Business.

The parties to the negotiations are currently in the product “nomination” process (*i.e.*, proposing products for inclusion). Negotiations took place in Geneva in December 2014 and focused on air and waste. The Clean & Renewable Energy and Energy Efficiency products categories were discussed in Geneva in late January 2015. The final nomination meeting will take place March 16–20, 2015, and will focus on environmental monitoring and analysis and other environmental products, as well as any unfinished business from prior meetings. After the nomination process is complete, the parties will turn to negotiating a finalized list of products and the tariff reductions that would be applied to each product or product category, likely over the course of 2015. For the EGA to apply to all WTO Members, the parties must account for 90% of the global trade for the products; the group of 14 Members account for 86%. If Turkey, Israel, and Iceland join the agreement, the group's portion would increase.

Potential issues in the negotiations will include how to deal with goods that have environmental and non-environmental uses (dual-use goods), and the cooperation of emerging economies that are looking for rapid growth.

Congress and the Midterm Elections. With Republicans taking over the Senate as a result of the midterm elections, both Congress and the Obama Administration have flagged trade as one area of potential bipartisan cooperation. This could bode well for both the EGA talks as well as other ongoing trade agreement

negotiations, including the Trans-Pacific Partnership (TPP), the U.S.-EU Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TISA) negotiations.

The Administration is seeking trade promotion authority from Congress, which would clear the way for concluding trade negotiations for Congressional approval on an up-or-down vote, without amendments.

AD/CVD Duties. One important caveat is that the EGA talks only address regular customs duties on environmental goods, not antidumping or countervailing (subsidy) duties. This is important because the United States and other countries have imposed AD and CVD duties to address unfair trade practices on some renewable energy products, such as China's dumping and subsidization of solar panels and wind towers. These types of trade duties are outside the scope of any EGA agreement, and any effort to bring AD/CVD duties into the discussion would quickly be opposed by Congress and many U.S. industries.

Outlook. At this time, the outlook for an EGA appears positive. However, it will be important to note if the negotiating countries maintain their ambition as the talks become more specific. It will be particularly important to note whether China, a party to the talks, is willing to cut tariffs and open its market to increased trade in environmental goods.

In any event, the end result of the negotiations is likely far away, and as stated by Yogi Berra: "It's tough to make predictions, especially about the future."