

Plurilateral Trade Agreement in Environmental Goods: Implications to Korea

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1. Introduction

On June 25, 2013, President Barack Obama of the United States announced his Climate Change Action Plan, listing the specific policy measures regarding one of the top-priority issues of his second term. One of the measures is initiating a trade negotiation on environmental goods, suggesting that the United States would take the related debates more seriously. The aim of the negotiation is to lower tariffs to environmental goods worldwide so as to solve the global environmental issues through free trade. This article discusses the obstacles to reaching such an agreement, and reviews the current situation of Korea's trade in environmental goods. Also, we assess the legal options for

the trade agreement in this area and their respective strengths and weaknesses. Finally, we draw policy implications.

2. Issues on Environmental Goods

There are two technical, yet fundamental, issues obstructing countries from reaching a consensus on trade agreement on environmental goods. The first one is how to define the scope of "environmental goods" to be subjected to be such an agreement. Namely, products suggested as "environmental goods" may also be used or applied for other, non-environmental ends.

Should these dual-use products be categorized as environmental, the scope of environmental goods for which tariffs are to be lowered will be expanded, thus raising a tension between developed countries and developing ones. Second, the current debate on environmental goods, mainly based on the so-called list approach, focuses mostly on HS-Code 6 products. Even if we were to detail the environmental goods to include those falling under finer HS Codes, there is yet

not an immediate solution to categorize the goods reflecting their environmental impacts into standard customs classifications.

There are several lists of environmental goods discussed worldwide.¹ These lists can be divided as shown in Table 1, along the purposes they serve and the scopes of environmental goods they include.

Table 1. Characteristics of Environmental Product Lists

Scope	Purpose	Facilitating policy research on environmental problems	Promoting lower tariffs for free trade and investments
Comprehensive scope		OECD (17)	WTO (14)
Specific scope		World Bank (8)	APEC (4)

Note: The numbers in parentheses indicate the number of categories (HS-Code 2) included in each organization's list.

Sources: compiled from various sources by the author.

In terms of the breadth of the scope of environmental goods included, the lists from the OECD and the WTO include more diverse products than those from the World Bank or the APEC.

3. Characteristics of Korea's Trade in Environmental Goods

To look up the world trade and Korea's trade in environmental goods, we use all the "environmental goods" from these 4 major lists that have been matched with the goods in the HS 2007 and reorganized to lose overlapping ones.

As of 2011, the world trade of environmental goods included USD 1.826 trillion in exports and USD 1,890 trillion in imports. Environmental goods trade made up six percent of the overall

international trade.² Over the same period, South Korea exported USD 33.4 billion and imported USD 35 billion worth of environmental goods. The exports of environmental goods, in particular, continue to grow more rapidly than the imports in Korea's overall trade balance.

As of 2011, the EU 27 were the most active in environmental goods trade, which accounted for 45.7 percent and 36.2 percent, respectively, of the region's total exports and imports. A majority of world trade on environmental goods involves advanced economies.³ The United States, China, and Japan are also highly dependent on environmental goods trade. Environmental goods account for 3.1 percent and 3.2 percent, respectively, of South Korea's exports and imports vis-à-vis the world.

1 Each one is developed by the Organization for Economic Cooperation and Development (OECD), the World Bank, the World Trade Organization (WTO), and the Asia-Pacific Economic Cooperation (APEC), respectively.

2. They are 208 goods under HS codes in 6-digit.

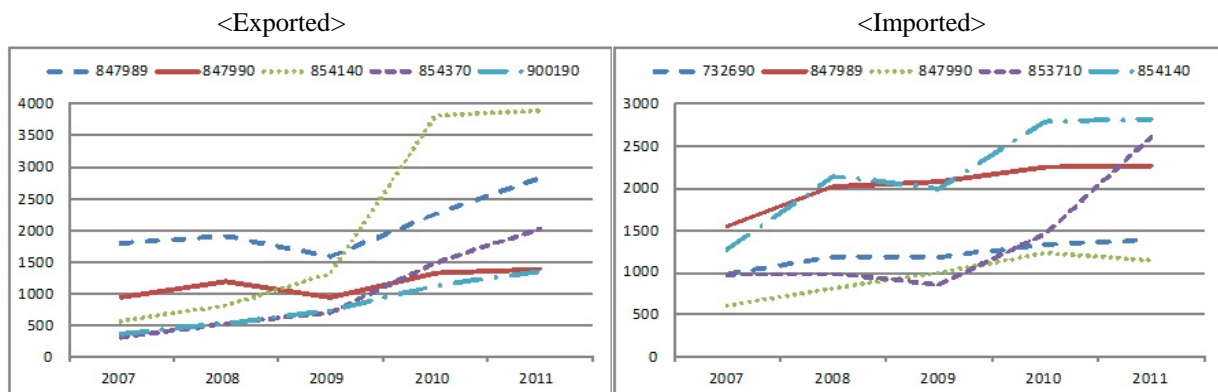
3. As mentioned earlier, environmental goods being debated now are mostly those under HS codes starting with 6. Yet products under HS codes starting with 10 include environmental and non-environmental products alike. It is thus difficult to get an accurate grasp of the specific characteristics of environmental good trade.

The biggest importer of South Korea's environmental goods is China, which imported USD 10.62 billion worth of such goods from Korea, or 31.8 percent of the overall environmental goods exported from Korea in 2011. Japan, on the other hand, is the biggest exporter of environmental goods to South Korea, as the latter imported USD 8.12 billion worth (or 23.2 percent) of such goods from the former in 2011. Korea's five main trading partner countries make up most of the exports and imports of environmental goods involving Korea, replicating a pattern similar to that noted in Korea's overall trade structure.⁴ While Korea's simple-average applied tariff rate for all environmental goods is 6.9 percent, most environmental goods it deals with are subjected to the free trade agreements it has signed with the European Union and the United States. The tariffs on these products will thus be completely repealed in the next five years, making it all the

likelier for the imports of these products to increase in the future.

Figure 1 shows the major environmental goods South Korea trades in. The HS-854140 products (i.e., photosensitive semiconductor devices and light-emitting diodes) form the largest groups in both exports and imports. The exports and imports of these products dramatically increased between 2009 and 2011, amounting to USD 3.83 billion and USD 2.82 billion, respectively. These are also the most popularly traded products worldwide. Korea is notable in that its exports of these products are growing at a significantly higher rate than the case for its imports. Most of the environmental goods Korea exports or imports are dual-use products. It is thus important for Korea to take active part in the growing worldwide debate on how to categorize these dual-use products in the trade negotiation over environmental goods.

Figure 1. Main Environmental goods Exported and Imported by Korea (Unit: USD 1 million)⁵



Source: UN COMTRADE.

4 As mentioned earlier, environmental goods being debated now are mostly those under HS codes starting with 6. Yet products under HS codes starting with 10 include environmental and non-environmental products alike. It is thus difficult to get an accurate grasp of the specific characteristics of environmental good trade.

5 HS 847989 is the code for the category of goods including automobile parts, ship parts, and other types of machinery. HS 847990 encompasses basic industrial machinery, precision machinery, and parts and components for transportation machinery. HS 854370 is the code for industrial and household electronic appliances. HS 900190 is for optical devices and parts. HS 732690 is for various products made of steel. HS 853710 is for power-distributing and controlling devices.

4. Assessing Legal Options for Trade Agreements on Environmental Goods

The rights and obligations a trade agreement imposes on signatories and non-signatories can dramatically differ, depending on which legal form the participating countries adopt. The choice of the form has thus become a core issue in the debate on a trade negotiation. Reviewing the available candidate forms is thus an important first step toward predicting other countries' strategy in the future and clarifying Korea's own stance.

A negotiation can be initiated from an international environmental regime, such as the United Nations Framework Convention on Climate Change (UNFCCC). Yet the UNFCCC is not particularly suited to trade issues because it is fundamentally a norm on the environment and not trade. Some may thus suggest the multiplication of trade agreement on environmental goods, and resorting to the WTO's dispute settlement mechanisms for solving specific issues that may arise. However, the WTO's mechanisms are also norms developed exclusively for trade, and may overlook environmental issues. Countries may seek exemptions from the general obligations imposed by the WTO framework in negotiating for trade agreements on environmental goods. Yet such an exemption requires the consent of at least three-fourths of all member-states of the WTO, and is, thus, unlikely to materialize. These difficulties of working with either the UNFCCC or the WTO agreements leave us with three options. That is seeking multilateral or regional trade agreements on the basis of either the Information Technology Agreement (ITA) or the Agreement on Government Procurement (GPA). The other is pushing for a stand-alone trade agreement that is completely independent of the WTO.

The ITA-type option can be used to obtain a multilateral trade agreement among like-minded countries, requiring the participants to incorporate the specific measures of their agreement on environmental goods into the 1994 GATT schedules of concessions on goods. Doing so will be a part of the obligations imposed by the new environmental goods agreement. In order for this option to work, a number of conditions need to be met. First, the resulting trade agreement on environmental goods ought not to be subjected to the WTO Dispute Settlement Understanding (DSU). Second, the participating countries must be full members. Third, the resulting trade agreement must require the participating countries to include their lowered tariffs on environmental goods into the 1994 GATT schedules of concessions on goods. Should a participant violate the concessions included in the 1994 GATT schedules, other participants may retaliate by revoking the concessions or by appealing to the WTO's strong dispute settlement system. The main advantage of the ITA-type option is thus that it accords a strong guarantee for the enforcement of the resulting trade agreement by allowing participating countries to have recourse to the WTO's dispute settlement mechanisms. Its shortcoming, however, is that it may allow non-participating member-states of the WTO to free-ride on the resulting trade agreement. For the concessions included in the 1994 GATT schedules, even those on environmental goods, are subjected to the most favored nation principle.

The GPA-type option can be used to achieve a multilateral or regional trade agreement among multiple states included in Annex 4 of the WTO agreement. Trade agreements among the Annex 4 states are binding only on the Annex 4 states that have signed or accepted them. In order for the GPA-type option to work, a number of conditions need to be met. First, the resulting trade agreement on environmental goods must be a plurilateral trade agreement, and not a covered

agreement listed in Appendix 1 of the DSU. Second, the participating states must be member-states of the WTO. Third, the participating states must first request that they be added to Annex 4, and have their request granted by the consensus at a WTO ministerial meeting. While the GPA option is free of the free-riding issue associated with the ITA option, the chances are slim that the WTO ministerial meeting would reach a consensus on approving the resulting trade agreement on environmental goods. Considering that the main aim of a trade agreement on environmental goods should be environmental conservation around the world, passing such an agreement only among a limited number of states without the participation of main greenhouse gas emitters is unlikely to achieve its objective.

Finally, the stand-alone option involves pushing for an international agreement on environmental

product trade similar to the UNFCCC and completely independent of the WTO arrangements. Again, a number of conditions need to be met for this option to work. First, the resulting trade agreement must not consist of any part of the WTO agreement. Second, the resulting trade agreement must not share anything with the WTO agreements in substance as well. The stand-alone option has the advantage of admitting participation from Iran, Kazakhstan, and other major greenhouse gas emitters that are not member-states of the WTO. Its shortcoming is that it may give rise to certain conflicts of obligations, forcing states to violate their obligations under one agreement in trying to fulfill their obligations under the other. While no such genuine conflict of norms has yet arisen with respect to any WTO agreements, there have been instances involving similar or minor conflicts.⁶

Table 2. Characteristics, Strengths, and Weaknesses of Possible Forms

Effect		Legal Form	ITA-type	GPA-type	Stand-alone
Substantial	Recourse to the WTO's dispute settlement mechanism		Yes	Limited	No
	Block to free-riding		No	Yes	Yes
	Admitting non-WTO member-states		No	No	Yes
	Possible conflicts of norms		No	No	Yes
Procedural	Need to revise WTO agreements		No	Yes	No
	Need to revise GATT schedules of concessions		Yes	No	No

Sources: compiled from various sources by the author.

5. Implications

International trade of environmental goods continues to grow worldwide, with many countries paying attention to environmental industries as a new source for their economic growth. Consider-

ing that South Korea's exports of related products are growing at much a higher rate than the case for other countries, a trade negotiation regarding this sector will have important meanings for the Korean economy. With the White House having released its Climate Change Action Plan,

⁶ Such as Mexico-Soft Drinks case (DS308) and Brazil-Retreaded Tyres case (DS332).

a more concrete discussion is expected in the near future for reaching an international trade agreement on environmental goods.

There is a recent tendency that developed countries are focusing on plurilateral type of trade agreements. Some are region-based like mega-RTA (Regional Trade Agreements), others issue-based or sectoral.⁷ This movement can be seen as a part of the developed countries' effort to re-structure the world order of trade regime. Korea is participating most of those agreements and is expected to participate in trade negotiation on environmental goods. The negotiation strategy needs to be built up to respond such a movement.

In designing a strategy for future negotiations regarding an trade agreement on environmental goods, policy makers need to bear in mind the relation such agreement will bear not only to the norms of international trade, but also to the norms of environmental debates. Therefore, a

successful strategy will first require a broad view. Environmental product trade consists of efforts to solve environmental problems by promoting free trade. All the debates on the topic thus far state the protection of natural environment worldwide as their purpose. Unlike multilateral or regional trade agreements in other areas, an agreement on this topic will be inseparable from the debates on environmental issues worldwide. It will thus need a comprehensive system encompassing both economic and environmental concerns. Moreover, a successful strategy will require a phase-by-phase approach. The negotiations surrounding the UNFCCC will continue until 2015, as a new climate regime is supposed to emerge by 2020. As a non-Annex I country in UNFCCC, Korea needs to consider how the strategy for negotiations over environmental goods should be paced along each three-period: that is, the period leading up to 2015, the period between 2015 and 2020, and the period after 2020. **KIEP**

⁷ Examples for the former are TTIP(the Transatlantic Trade and Investment Partnership), TPP(the Trans-Pacific Partnership and for the latter the Anti-Counterfeiting Trade Agreement (ACTA), the Trade in Services Agreement (TISA), and the expanded Information Technology Agreement (ITA)