

Negotiating Group on Rules

NEGOTIATING GROUP ON RULES

Report by the Chairman to the Trade Negotiations Committee

I. ANTI-DUMPING AND SUBSIDIES AND COUNTERVAILING MEASURES INCLUDING FISHERIES SUBSIDIES

A. INTRODUCTION

1. This report updates my July 2005 report to the Trade Negotiations Committee, focusing in particular on the achievements of the Negotiating Group on Rules since then, in all areas of its mandate, as well as looking ahead to the Hong Kong Ministerial Conference, and to our work in 2006.

2. Members will recall that in my July report, I outlined five steps that I intended to implement so as to move the Group's work forward in an accelerated and intensified manner. First was a call to the Participants to bring more focus to their proposals, by submitting *specific legal drafting* for the changes they were seeking. Second was the creation of a process of plurilateral consultations on the basis of these proposed legal texts, with a view to sharpening the discussion to the greatest extent possible, so as to clarify the degree of acceptance of the proposals, and thus to identify areas of possible convergence. Third was my intention to request some individuals to assist me as "Friends of the Chair", as a further means of deepening the discussions and thus advancing work on particular areas. Fourth was the intensification of the Group's meeting schedule, including with intersessional meetings as appropriate. Fifth was establishment of a Technical Group, to examine possibilities for developing a standardized anti-dumping questionnaire, with a view to reducing costs and increasing predictability for investigating authorities and exporters; this group is making progress toward its goals. I am pleased to report not only that I have implemented all of these steps, but also that through this process, the Negotiating Group's work has substantively advanced this autumn.

3. Of course there is no room for complacency. An enormous amount of both technical and political work remains to be completed, and time grows ever shorter. That said, I firmly believe that the process that we have put into place in the Negotiating Group is fundamentally sound. Thus, as the Group even further accelerates its work in 2006, as it must, it is essential that we preserve and build upon this existing process.

4. The following sections provide a more detailed discussion of the negotiations in the areas of anti-dumping/countervailing measures, horizontal subsidies disciplines, and fisheries subsidies, and what I foresee for 2006.

B. STATUS OF NEGOTIATIONS ON ANTI-DUMPING/COUNTERVAILING MEASURES

5. Anti-dumping continues to be the most active area of the negotiations. Proposals tabled in this area are increasingly specific, to the point that the Negotiating Group's anti-dumping/countervail work is being carried out almost exclusively on the basis of specific legal texts. Taking an overall view of the anti-dumping negotiations, certain broad principles are discernible, in particular: avoiding

unwarranted use of anti-dumping measures on the one hand, while preserving the basic concepts, principles and effectiveness of the instrument and its objectives where such measures are warranted, on the other hand; and limiting the costs and complexity of proceedings for interested parties and the investigating authorities on the one hand, while strengthening the transparency and predictability of such proceedings on the other hand.

6. In this regard, the Negotiating Group has been considering proposals to clarify and improve the rules regarding, *inter alia*, determinations of dumping, injury and causation, and the application of measures; procedures governing the initiation, conduct and completion of anti-dumping investigations, including with a view to strengthening due process and enhancing transparency; and the level, scope and duration of measures, including duty assessment, interim and new shipper reviews, sunset, and anti-circumvention proceedings.

7. Specific proposals that the Group has been discussing in detail include proposals on determinations of injury/causation, the lesser duty rule, public interest, transparency and due process, interim reviews, sunset, duty assessment, circumvention, the use of facts available, limited examination and all others rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations. The desirability of applying to both the anti-dumping and countervail rules any clarifications and improvements which are relevant to both areas is broadly recognized. Additional proposals continue to be submitted, and the process of detailed discussion will certainly continue, and accelerate, after Hong Kong.

C. STATUS OF NEGOTIATIONS ON HORIZONTAL SUBSIDIES RULES

8. The negotiations in respect of subsidies disciplines, as well as the calculation rules for countervailing measures, have accelerated since my July report. Certain textual proposals have been submitted, and the process of detailed consideration, including through plurilateral consultations, has begun for some of these proposals.

9. Issues on which proposed amendments to the SCM Agreement have been submitted include definition of a subsidy, specificity, prohibited subsidies, serious prejudice, export credits and guarantees, and the allocation of benefits. It is my understanding that additional proposals are being prepared and should be submitted in the near future.

10. Many Participants have stressed from the outset of the negotiations the importance to them of subsidy-related issues in these negotiations. To date, however, far fewer and far less precise proposals have been tabled in this area than in respect of anti-dumping, and these negotiations are considerably less developed than those on anti-dumping. Given that Participants continue to state their strong interest in a substantial outcome in respect of the subsidy rules, I thus am gratified to see the recent increase in activity here. I must emphasize, however, that the Group will need to rapidly deepen its analysis of subsidy-related proposals after Hong Kong to ensure that this area can contribute to a balanced final outcome in the Rules negotiations.

D. STATUS OF NEGOTIATIONS ON FISHERIES SUBSIDIES

11. The negotiations on fisheries subsidies continue to be quite active, and have progressed since the beginning of the DDA. There appears to be broad agreement among Participants that disciplines on subsidies in the fisheries sector should be strengthened, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing. There also is broad agreement that any new disciplines should include appropriate and effective special and differential treatment provisions for developing and least-developed Members, taking into account the particular

importance of the fisheries sector to such Members. It is therefore very encouraging to see that the discussion of the developmental aspects of fisheries subsidies has started early enough in the process.

12. There remains, however, a considerable distance to be travelled between the broad agreements in principle and the elaboration of precise legal text setting forth the nature and extent of new disciplines, including the scope of a prohibition, exceptions, transparency and enforcement provisions, and special and differential treatment provisions.

E. POST-HONG KONG WORK

13. I believe that the process currently being used by the Group is the right one for achieving substantial results in all areas of the Rules mandate, including its development dimension. To this end, it is my intention, after the Hong Kong Ministerial, to build on and intensify this process, with a view to deepening all Participants' understanding of the proposals, and identifying possible areas of convergence. For anti-dumping, this means first and foremost an intensified schedule of negotiations on the precise textual proposals that already are before the Group or that may yet be submitted. For subsidies, the first priority is to obtain from Participants as soon as possible precise textual proposals on all of the areas in which they are seeking changes, as for the time being such proposals exist only in a few of the areas identified as being of interest. Only on the basis of such textual proposals can sufficiently focused discussion be undertaken to allow for identification of possible areas of convergence. For fisheries subsidies what is required in the first instance is for Participants to table much more specific proposals, in the form of proposed text; this is a prerequisite to further progress.

14. My goal for this intensified process in all areas of the mandate is for the Group to develop as quickly as possible the necessary elements that would allow me, if I am so mandated, to table a consolidated draft legal text of the AD and SCM Agreements that would be the basis for the final stage of the negotiations.

15. In this regard, I am fully conscious of the 2006 end date for the Doha Development Agenda and I recognize that for an eventual Chairman's text to serve its intended compromise-developing function, it will need to be preceded by very detailed work of the Participants that illuminates the political as well as the technical dimensions of each proposal, and facilitates the identification of the necessary balance. Thus, there is no time to be lost in completing this detailed work.

16. To conclude, I can only reaffirm my commitment to doing everything within my power to ensure that the Negotiating Group on Rules undertakes the necessary substantive work, at the necessary pace, to clarify and improve the rules according to the mandate in Doha and make its contribution to the final outcome of the negotiations.

II. REGIONAL TRADE AGREEMENTS

A. STATUS OF WORK

17. The negotiations on WTO's disciplines and procedures on regional trade agreements (RTAs) continue to be very active and have progressed considerably in 2005. Acknowledging the importance that RTAs have come to play in the trade policies of virtually all Members, the Group shares a systemic interest in enhancing the transparency of all types of RTAs (Article XXIV of the GATT 1994; Article V of the GATS; and paragraph 2(c) of the Enabling Clause), and in ensuring the complementarity of RTAs' disciplines with the WTO. Discussions on RTA Transparency have moved to text based negotiations while those on RTA systemic issues have gained momentum, notwithstanding the existence of acute differences on the scope and substance of the negotiations in this area. Overall it appears that the majority of Participants are seeking for a balanced outcome of

these negotiations through the clarification and improvement of procedures as well as the disciplines related to RTAs.

18. With respect to RTAs Transparency, the Group is currently engaged in text-based negotiations on the "Elements for an RTAs' Transparency Mechanism" based on the latest informal note of the Chair.¹ This reinforced mechanism for the consideration of RTAs by the WTO includes a device for the early announcement of RTAs; a timeframe for notification; precise guidelines on the type of information to be submitted by the parties; a change from the currently required - but *unattainable* - collective assessment of RTAs' consistency to a fact-finding process that includes a Secretariat's factual presentation² of RTAs; and streamlined and effective procedures for RTAs' subsequent notifications and reporting. The provision of technical support by the Secretariat to help Members fulfilling their transparency obligations is also foreseen, as is the improved dissemination of RTA information.

19. The remaining technical aspects of this work are being conducted in dedicated informal sessions of the Group. Areas where detailed drafting and a few refinements are still needed include the type of information to be provided by RTA parties, in particular statistics, and how to deal with unfinished examination work in the Committee on Regional Trade Agreements (CRTA).

20. Differences remain on the application of the emerging transparency mechanism to RTAs notified under the Enabling Clause, with some Members strongly against it. The Group devoted two informal sessions to this question with no specific and concrete understanding.

21. Negotiations on RTA systemic questions have attracted considerable interest and have recently shifted from their initial academic stance to technical consideration of the various issues tabled. Discussions have focused on a core set of issues, on the basis of text proposals by Participants, in particular the clarification of the "substantially all the trade" (SAT) concept, the length of transition periods, and RTAs' development dimension (inclusion of special and differential treatment (S&D) provisions in Article XXIV of the GATT 1994). In spite of the acknowledged linkages between these issues, their consideration has been singled out in informal dedicated meetings. Informal roadmaps by the Chair have further disentangled some of the elements falling under each issue.

22. The main thrust of the discussions has to date been on the clarification and calculation of SAT and on RTAs transition period. The quantitative elements of SAT have attracted most of the Group's attention through consideration of the pros and cons of tests based on trade and on tariff lines, their respective benchmarks, how to combine them, the level of HS disaggregation for the calculations, the non-exclusion of "major sectors", and most recently the relationship of "other restrictive regulations of commerce" with SAT. Views diverge among those Members favouring a trade based test, a tariff line test and a combined one; the latter one has received broader support, however, there too views differ on the weight to attribute to each benchmark and on how to combine them. Some Members favour a more holistic approach to SAT that would include consideration of "other restrictive regulations of commerce" as well as preferential rules of origin. Qualitative benchmarks to complement the SAT evaluation have been referred to but most Participants favour postponing such discussion to a later stage of the negotiations.

23. With respect to RTAs' transition period, there appears to be convergence among Members on what should be the maximum length allowed. Views diverge, however, on the definition and scope of application of the "exceptional cases" that would allow the parties to an RTA to go beyond the transition period and, in particular, on whether the exception should only be available to developing

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² Since September 2004, this element has become operational in the CRTA, on a provisional and voluntary basis.

countries. An additional issue being considered is the relationship between RTAs transition period and the calculation of SAT, in particular the point in time during the implementation of an RTA when the SAT test is to be applied.

24. The issue of S&D treatment permeates all aspects of these discussions. The scope and extent of S&D to be included in Article XXIV of the GATT 1994 is however unclear, varying from all elements of the existing requirements as proposed by a group of developing countries, to specific elements such as differentiated SAT benchmarks as proposed by other Participants. Support among Members for discussions on the introduction of S&D provisions in GATT Article XXIV is also unequally distributed. Some Members argue in its favour so as to accommodate North-South RTAs, others hold that the question should be addressed at a later stage of the negotiations, and other Members, including some developing countries, have expressed serious concerns in this respect.

B. FUTURE WORK

25. Following the Group's dedicated informal meetings held since September of this year, I am in a position to revise my informal note on "RTAs transparency", to recapitulate the progress achieved in those discussions and to provide Participants with a new draft text. I believe that on that basis the Group will be better positioned after the Ministerial Meeting to resolve the few outstanding issues (in particular, the questions of how to deal with RTAs presently under examination in the CRTA and to improve transparency of RTAs notified under the Enabling Clause). Depending on progress a provisional decision on RTA transparency may be envisaged before the end of the Round.

26. On systemic issues, the proposals presently on the table and the informal discussions held so far provide me with a solid base for a revised roadmap on RTA systemic issues. I anticipate that its focus will be on the clarification of SAT and on the other questions so far discussed, with a detailed breakdown of the concrete elements underpinning each of the issues. This will not preclude broadening the scope of the negotiations provided that further text proposals on these and other issues are tabled. The aim of the roadmap is to achieve sufficient convergence on these questions to allow the Group to arrive at appropriate outcomes by end 2006.
