

Negotiating Group on Rules

NEGOTIATING GROUP ON RULES

Report by the Chairman to the
Trade Negotiations Committee

1. As I prepare this Report to the Trade Negotiations Committee, negotiators are getting ready for critical meetings that we all hope will result in the establishment of modalities in Agriculture and Non-Agricultural Market Access. Since Rules negotiations are part of the single undertaking under paragraph 47 of the Doha Declaration, we must be in a position to move quickly to insure that our work is effectively synchronized with that of other Groups so that Rules can make its contribution to the overall package of results of the Round. This task requires guidance from the Chair and I have already conveyed to you, informally, my ideas about how the Rules negotiations should proceed in the period after modalities have been achieved. I would now like to report to the Trade Negotiations Committee, formally and with more precision, my intentions in this regard.

Anti-Dumping and Subsidies and Countervailing Measures, including Fisheries Subsidies

2. *Anti-Dumping and Horizontal Subsidies.* Let me first speak to the need and timing for new texts on anti-dumping and horizontal subsidies. When I issued my texts in November last year, I emphasized that those texts were Chair's drafts intended to provoke discussion on the broad parameters of possible outcomes to the negotiations; that they were technical papers not submitted for approval in whole or in part; and lastly that I would circulate revised draft texts as soon as I had a sufficient basis to do so. Although I do not actually have the basis I had hoped for to prepare these revised drafts, I believe that we cannot afford to wait any longer (for the reasons mentioned in the paragraph above) before I circulate new texts in these areas. Accordingly, I intend to circulate revised draft texts on anti-dumping and horizontal subsidies as soon as possible after modalities are achieved, and in any event well in advance of our meetings in September, as discussed below. This will allow delegations to be fully prepared when we resume in the fall.

3. With respect to the nature of these coming texts, it is clear to me that we need to move from the Chair's texts to Draft texts which will have to describe a gradually emerging consensus. This is for the following reasons. First, few if any delegations believe that my first Chair's texts struck a proper balance. Second, little if any progress has been made since I tabled those texts to find an alternative balance around which Members could converge. Third, it seems to me that Members at this stage would prefer that I pursue a bottom-up approach and that I adequately reflect the actual negotiations among Members. I should therefore start providing draft legal language in those areas where we could find consensus and in areas where convergence could be potentially achieved. This is the only way to provide all delegations with the assurances they need that their positions are not prejudiced by revised texts. Thus, it should not be expected that my new texts will offer any magic solutions in the many areas where Members' positions differ dramatically and where the alternatives remain as delegations originally tabled them, i.e., very far apart.

4. *Fisheries Subsidies.* With respect to fisheries subsidies, the situation is more complex and the problem is of a different nature. While progress on fisheries subsidies is of course no less urgent or important than that on anti-dumping and horizontal subsidies, in this area we have no pre-existing GATT/WTO agreements to which we can revert and the differences among delegations go to the very concepts and structure of the rules. Here, we are faced with fundamental challenges. The Group, as mandated, should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing. At the same time we should effectively and appropriately formulate a special and differential treatment that addresses the very real concerns of developing Members with respect to development priorities, poverty reduction, and livelihood and food security concerns, including for millions of small fishers. These legitimate concerns can only be heightened by the current crisis of surging food prices. I believe that further discussion is necessary to provide the essential input I require for a forthcoming revision of my text on fisheries subsidies that could meet these two important objectives. As a tool to facilitate those discussions, I expect to table a specific "road map" (i.e. a paper identifying the key questions we need to address in order to reconcile the approaches). I will do this at the same time as I circulate revised texts on anti-dumping and horizontal subsidies, as it is important that all areas of our mandate continue to move forward together.

5. *Work programme.* If we hope to move to final agreement in this Round by the end of the year, it is clear that, in Rules, we will have to start early and work very hard to get there. Accordingly, I intend to convoke a series of intensive meetings right after summer break. I expect to start with an extended session on fisheries subsidies, from Monday 1 September through Wednesday 10 September, in order to gain the input mentioned above. We will then turn immediately to anti-dumping and horizontal subsidies, with a two-week session running from 15 to 26 September. Thereafter we will need to meet on a regular and in fact nearly continuous basis throughout the fall and to that end I have already reserved rooms for further clusters from 13 to 24 October and 10 to 21 November. I seek to develop further revised texts, aiming at circulation towards the end of October and again in early December. This is in my view the best way to ensure that we will have Rules texts reflecting the greatest convergence possible for inclusion in the final comprehensive package of results for the Round.

Regional Trade Agreements

6. *The Transparency Mechanism.* Members will recall that at the time of the last General Council meeting in December 2007, I had indicated that the initial review of the provisionally adopted Transparency Mechanism on Regional Trade Agreements could not be completed because Members felt that the necessary experience with the Mechanism had not yet been built up. The Transparency Mechanism, which was negotiated in the Negotiating Group on Rules, is being implemented by the Committee on Regional Trade Agreements (CRTA) and the Committee on Trade and Development (CTD). While the CRTA has until now considered 17 RTAs, the CTD has not yet had a chance to consider any RTAs under the Transparency Mechanism mainly because few new RTAs have been notified under the Enabling Clause; the first such consideration by the CTD is expected in October this year.

7. It is my sense that Members continue to believe that while experience is being built up gradually, especially in the CRTA and perhaps shortly in the CTD, it remains insufficient at this time to allow a review of the functioning of the Mechanism to be completed. Nevertheless, I do think that discussions on the functioning of the Transparency Mechanism should take place. I propose therefore to schedule an informal meeting of the Group in early October to begin such consultations. Inputs for this meeting would be greatly assisted by Members' views on the functioning of the Mechanism. I also think that it would be appropriate to ask the Chair of the implementing bodies, the CRTA (and the Chair of the CTD once an agreement has been considered in the CTD) for their views, on their own responsibility, on the functioning of the Mechanism in the CRTA (and the CTD); in addition, I

will also ask the Secretariat to outline its experience in implementing the Mechanism. These three elements will help the Negotiating Group to begin its discussions on the functioning of the Transparency Mechanism on RTAs.

8. *The systemic issues relating to RTAs.* In this area I will continue to consult Members. My impression is that no one is disputing the fundamental importance of the issues and to continuing discussions on systemic issues. Nevertheless, as I have argued before, the Group cannot advance and conclude its work in this area without text-based proposals by Members. As time is short - we have only 16 weeks left - I hope we will see text-based proposals from Members, as instructed by Ministers in December 2005, in time for the next meeting of the Group in October and to bring these negotiations to a successful conclusion.
