WORLD TRADE ORGANIZATION

RESTRICTED

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Negotiating Group on Rules

SUMMARY REPORT OF THE MEETING HELD ON 17-18 MAY 2005

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 17-18 May 2005.

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

A. Adoption of the Agenda

B. Regional Trade Agreements (RTAs)

C. Other Business

B. REGIONAL TRADE AGREEMENTS

3. The Chairman proposed that the Group consider first the submissions tabled by Australia, namely that contained in TN/RL/W/173 (TN/RL/W/173/Rev.1 in its English version), which had been the subject of a preliminary debate at the Group's last meeting, and a follow-up proposal circulated just before that meeting as TN/RL/W/180. He suggested that the Group could then consider, on a preliminary manner due to its late arrival, the submission made by the European Communities, circulated as TN/RL/W/179, thus allowing the Group to broaden its discussions on systemic issues.

4. The proponent of TN/RL/W/180 presented his delegation's second submission on the definition of "substantially all trade" (SAT), which responded to the comments and requests for clarification by Members in relation to Australia's previous submission on this issue. In particular, the paper affirmed his delegation's position that a quantitative benchmark was needed for measuring substantially all trade. That would involve a tariff-line coverage test, requiring duties to be eliminated on at least 70 per cent of tariff lines at the Harmonized System (HS) six-digit level on entry into force and 95 per cent at the end of the implementation period; and a trade volume test, to ensure that products that were highly traded between the parties were included in the lines subject to duty elimination. On the trade volume test, duty elimination should cover all products where the average value of imports over the three years preceding the agreement exceeded 0.2 per cent of total imports of the free trade agreement (FTA) party; in fact, the figure proposed earlier - i.e. 2 per cent - had been changed to 0.2 per cent to ensure that highly traded products were adequately covered at this level of disaggregation. An alternative measure could be that, for example, the top 50 imports between the RTA parties, measured over the three years preceding the Agreement, be included in the lines subject to duty elimination. The submission also elaborated on his delegation's proposal that the RTAs' examination process should identify significant exports of an FTA party that, but for protectionist measures, would be traded between the FTA parties; that amounted to a transparency device to expose the seriousness and sensitivity of products that were excluded from duty elimination. A further

clarification of the issue of the ten-year phase was also provided. Finally, the proponent reaffirmed his delegation's view that the new rules on SAT should apply to all RTAs in force when the new rules were agreed, and stressed the need for an ambitious and robust discipline under Article XXIV to ensure that RTAs supported, rather than undermined, the multilateral trading system.

5. Participants thanked the proponent for the follow-up submission, noting that while comprehensive comments would be provided on the first submission the second submission would need further consideration.

6. Various Participants supported the proposed methodology to discipline RTA negotiations and assign standards to RTAs. It was noted that any clarification or improvement of WTO rules on RTAs should not result in less certainty as to whether WTO requirements were fulfilled. Some Participants considered that the thresholds indicated in the submission were too ambitious and stressed that the underlying tone of the negotiations on RTAs' rules should be flexibility (to take into account different situations and realities) rather than rigidity; in particular, it was said that the proposed benchmarks amounted to all the trade, and more than just substantially all trade, and could therefore not be a starting point for discussions. It was also stressed that a tariff-line definition was not appropriate for RTAs between developed and vulnerable developing countries; that proposal, combined with the other trade tests, set an extremely ambitious agenda that could only be discussed in a much more comprehensive context that appropriately moderated ambition with the development objectives of RTAs as defined in the DDA. One Participant was in favour of the creation of meaningful yet practical criteria for defining SAT which would review the RTAs' trade liberalization from a variety of perspectives, thereby ensuring that RTAs were of a comprehensive nature and therefore supportive of the multilateral trading system; the need for integrating within that definition a fixed minimum, ambitious benchmark had to be examined carefully. It was also noted that the aim of these negotiations should be to avoid selectiveness *vis-à-vis* Article I of the GATT 1994 by providing that those RTAs allowed by the WTO would minimize the harm to the multilateral trading system; in that context, the Group should aim at providing guidelines towards that objective and not try to define the elements of an ideal RTA.

7. Clarification was requested on a number of aspects of the proposed tariff-line SAT benchmark. Confirmation was sought that the 95 per cent threshold would apply individually to all RTA parties, as it would seem from paragraph 10 of TN/RL/W/180. With respect to the proposed benchmark and parameters to be used for defining "highly traded" products, some Participants wondered whether changes in the HS nomenclature (e.g., an increase in the number of tariff lines) or trade developments could overturn an RTA's WTO conformity and require amending it. It was stressed that trade developments should not make an RTA incompatible with WTO rules. The combination of an ambitious benchmark with the "highly traded" product requirement might be unfair for countries with limited trade diversity, and significantly reduce their primary source of revenue. Some Participants cautioned against the use of the six-digit level in the context of the tariff-line benchmark. The point was made that while HS consistency only existed up to the six-digit level, the fact that both the numerator and the denominator used for the calculations on the number of duty-free tariff lines referred to the same national schedule would render any discrepancies *vis-à-vis* the results an academic issue. It was argued that the use of the six-digit level would not capture the true level of liberalization in many RTAs, in particular because in many instances concessions were exchanged at various levels of disaggregation; further, it could minimize the incentive to protect products on the narrowest parameters possible. It was also proposed that the evaluation be made on the same basis as that on which the RTA had been negotiated or at the eight-digit level.

8. Divergent views were expressed regarding both the need for the setting, and the level of, the initial benchmark. One argument presented against the setting of an initial benchmark was that Article XXIV of the GATT 1994 provided for an end result regarding SAT but did not prescribe the process by which such liberalization was to be attained. Also, it was argued, the imposition of such a

criterion could not always be the most appropriate tool for obtaining overall comprehensive trade coverage and could impose an unnecessary degree of micromanagement on the RTA's trade liberalization; in practice, a phase-in period to accommodate domestic sensitivities, allowing more time for adjustment, often resulted in a broader scope of products subject to eventual liberalization. Regarding the proposed level for the initial benchmark, some Participants were of the view that it was too ambitious; in particular, one Participant pointed out that the trend in most recently concluded RTAs was for initial liberalization of between 20 to 30 per cent of tariff lines. Noting that the proposed benchmark might not be very meaningful as major sectors could be left out, another Participant proposed starting from a lower benchmark but achieving the targeted liberalization within a short transition period.

9. While some Participants favoured an SAT definition based on trade benchmarks, others favoured a definition setting minimum percentages for both duty-free tariff lines and trade flows, referring in that context to the need for an adequate approach for evaluating the exclusion of major sectors from the coverage of an RTA. Recalling his delegation's idea put forward at the previous meeting of a threshold of 95 per cent of both trade and tariff lines, one Participant said that in order to reach a needed ambitious result other ideas should be explored. Divergent views were however expressed on the adequacy of the proposed "highly traded" product approach, and the suggested alternatives for dealing with such matters, and clarification was requested on how the "highly traded" product approach would better address the proponent's concern *vis-à-vis* trade fluctuations. The point was made that the proposed test might imply 100 per cent coverage in case of a country where trade was concentrated in a relatively small number of tariff lines; in that case, flexibility should be provided for. Alternative approaches proposed to deal with these matters included complementing the tariff-line benchmark with a trade test based on the overall trade covered by the RTA; looking at the parties' top imports and exports - without setting a fixed threshold requirement for their liberalization; and providing for requirements in terms of a percentage of intra-trade exports *vis-à-vis* exports to all markets of the product in question. Clarification was requested on why the benchmark proposed in the second paper had been made much more stringent than that proposed in the earlier paper; some Participants disagreed with the setting of such a strict threshold. Additional information was requested regarding the alternative approach proposed in paragraph 14(ii) of TN/RL/W/180 - which, it was noted, appeared highly dependent on trade profiles - in particular regarding its practical effects. One Participant noted that performing such a test at the six-digit level would mean extending the benchmark; further, it was not clear whether that approach would lead to meeting the overall aim of trade liberalization in every case. He then presented some cases for which he had doubts on the logic and/or feasibility of insisting the tariff be eliminated for the top imports, and asked Participants to reflect upon them. The first case concerned a situation where a country was significantly competitive in one product at the MFN level and where any additional gain from tariff elimination would be captured by the exporter, rather than the consumer; the second case concerned products of high revenue sensitivity for a particular trading partner.

10. One Participant proposed that the Group consider using other evaluative criteria for measuring RTA liberalization and gave examples of various "indicators" - falling short of amounting to "tests" – to help clarification of the terms of the agreement. Such "indicators" might include the extent to which a party's top exports to other RTA partners and/or to the world were liberalized, whether any major sectors had been excluded from liberalization, and consideration of changes in tariff-rate quotas (TRQs), by comparing the percentage of trade covered by TRQs at the date of entry into force, at some intermediate point, and at full implementation. Other helpful "indicators" could be comparing the average preferential rates of each party to the RTA before and after full implementation; the highest base preferential tariff rates at the date of entry into force with the highest MFN applied tariff rates; and the number of tariff lines in a party's schedule before launch of RTA negotiations and after the date of the RTA's entry into force. She clarified that RTAs' parties would have the opportunity to respond to questions raised by these factors. Another Participant noted that the focus should not be on setting parameters for intra-trade liberalization; rather, the Group could

instead consider requiring that such preferences be extended to all WTO Members on an MFN basis after a given number of years, upon completion of the phasing out period. In that context, the Negotiating Group could negotiate the appropriate number of years and provide for adequate S&D provisions for developing countries.

11. Some Participants welcomed the proponent's "but for" test, contained in paragraphs 16 and 17 of TN/RL/W/180; it was suggested that such a transparency device might be included in the Secretariat's factual presentation of RTAs. Doubts were however expressed on whether such an exercise would go beyond a simple information exercise; it was noted that this should not have an impact on the RTA's examination and should not divert Participants' attention regarding informal discussions being held on a new transparency process for RTAs.

12. There was disagreement on whether the Group could progress on the clarification of SAT with respect to duties only, as reflected in paragraph 21 of document TN/RL/M/24. It was argued that the SAT requirement related to both duties and "other restrictive regulations of commerce" (ORRCs), and that it would be more logical to seek clarification of all SAT-related elements together. One delegation underlined the need for clarifying whether parties to an RTA could be exempted from trade defence measures taken on an MFN basis (under GATT Articles VI and XIX); such clarification would keep the balance that existed in the requirements of GATT Article XXIV:8, since it seemed logical that if duties were abolished for X per cent of HS lines at the six-digit level, then trade remedy measures should be abolished for the same HS lines.

13. A number of Participants suggested that the issue of preferential rules of origin (PROO) merited further consideration and could not be delinked from the SAT discussion. In particular, they pointed to existing links between the SAT requirement and PROO, namely that PROO limited by definition the product coverage under RTAs, but also that burdensome PROO could undermine and render meaningless any proposed SAT requirement. One Participant referred in particular to the implications of such a relationship for weak and vulnerable economies.

14. Several Participants noted that ten years was an ideal phase-in period. For one Participant, that should be seen as the outer limit for phasing in liberalisation commitments and earlier liberalisation of SAT should be an objective in any RTA. Some other Participants stressed that longer phase-in periods might be needed in order to achieve as comprehensive tariff-line coverage as possible. In that sense, it was proposed that the rules should emphasize RTAs' comprehensiveness rather than the speed of liberalization. The point was also made that transition periods longer than ten years were explicitly provided for in the 1994 *Understanding on the Interpretation of Article XXIV of the GATT 1994*. The point was made that any assessment of the reasonableness of longer transition periods should take into account disparities in the level of development between the parties to the RTA, as suggested in TN/RL/W/155; it was further argued that RTAs between developed and vulnerable developing countries - a term unknown at the time of the Uruguay Round negotiations - could be justified as exceptional and benefit from extended transition periods.

15. Some Participants agreed with the proponent's view recorded in paragraphs 18-21 of TN/RL/W/180 according to which "an RTA notified under Article XXIV, but not notified as an interim agreement, should be assessed on its trade coverage and compliance with the requirement of eliminating duties on substantially all trade at the time of entry into force" and stressed the need to regularise and clarify current practices. However, other Participants, referring to GATT/WTO practice, noted that the timeframes provided for in the *Understanding on the Interpretation of Article XXIV of the GATT 1994* applied to all RTAs with phase-in periods, even when not explicitly described as interim agreements; numerous RTAs notified to the WTO contained in practice the kind of plan and schedule contemplated in Article XXIV. One Participant referred to Article 3.2 of the Dispute Settlement Understanding, which reaffirmed that WTO Agreements were to be interpreted "in accordance with customary rules of interpretation of public international law" and to Article 31 of the

Vienna Convention on the Law of Treaties; this also gave some relevance to the practice as regards the notification of RTAs as interim agreements as well as the definition of SAT. He argued that, in light of the SAT requirement, it appeared reasonable to conclude that an insubstantial portion of intra-trade tariffs could be eliminated over a period longer than ten years, without being subject to the provision for special justification as required in the case of interim agreements. He also expressed concern about the burden of additional notification requirements if all RTAs involving developed and developing countries had to be notified as interim agreements; in that respect, he asked for clarification on whether all such future RTAs would have to be notified as interim agreements if they were granted any extended transition period under paragraph 5(c) of Article XXIV of the GATT 1994.

16. Recalling that the Doha negotiating mandate requested that RTAs' developmental aspects be taken into account, some Participants regretted the absence of a specific special and differential (S&D) treatment component in the proposal; although they noted the proponent's readiness to discuss, it was their view that S&D questions should be dealt with in conjunction with discussions related to specific systemic issues. The point was made that S&D treatment should reflect asymmetries among RTAs' parties, in particular *vis-à-vis* the RTA parties' levels of economic development; tariff structures and tariff levels; trade patterns and industrial structures; and sensitive sectors. In this context, some Participants argued that a single SAT benchmark and a universal length of transition period seemed inappropriate; rather, developed Members' RTAs should be subject to stricter and higher benchmarks than those applicable to developing Members.

17. Divergent views were expressed on whether any newly-clarified rules on RTAs should be retroactive and applicable to all RTAs. Some Participants considered unfair not to provide for retroactivity as this would only bind newly-established RTAs to improved and strengthened rules while not subjecting a large number of existing RTAs to such new rules. The sensitive nature of this question was however emphasized, in particular because retroactive application might imply the renegotiation of some RTAs; transition periods might be needed and their appropriate length could only be better assessed when the improved disciplines had taken clearer shape.

18. The proponent thanked Participants for the comments made and noted that the aim of his delegation's proposal was to provide for a simple, clear and sharp rule that applied to everyone. Its primary element was that duties be eliminated on at least 95 per cent of tariff lines at the six-digit level at the end of a transition period lasting a maximum of ten years. It was his delegation's view that an SAT definition based on a tariff-line benchmark was the most appropriate to deal with trade fluctuations. Referring to the six-digit level, he could accept that countries had different splits in their schedules that might have to be accommodated in order to enhance the incentives for reducing the number of lines not subject to liberalization. However, he reaffirmed that the six-digit level was appropriate as the benchmark basis, since it would guarantee that not too many lines were carved out of the agreements and it allowed comparison between national schedules; the clarification and improvement of the rules on this basis would help ensure that the entire multilateral system benefited from the reforms.

19. The proponent disagreed that the initial 70 per cent benchmark amounted to unnecessary micromanagement, and was concerned that such a comment had been made jointly with a comment that longer than ten-year transition periods might be necessary. He cautioned that if too many flexibilities were granted, Members would be allowed to do whatever they wanted with their RTAs. He noted that there was nothing in Article XXIV and the Understanding to suggest that SAT should not be met on entry into force; the proposal of allowing for 30 per cent of tariff lines not being subject to duty elimination at entry into force already provided a considerable amount of flexibility. However, given that it was the end result that counted, his delegation would reflect further on this question and the possibility of back-loaded duty elimination, while noting that such an approach would only defer the adjustment costs and could potentially jeopardize the complete implementation of the RTA.

20. The proponent also recognized that the tariff-line approach had a weakness in cases where trade was highly concentrated in a relatively small number of tariff lines; it was for those cases that the supplementary tool of the "highly traded" products had been designed. The intention of such a device was to find a quantitative benchmark for identifying products where there was relatively high trade, and ensure that they were not excluded from the benchmark of 95 per cent of tariff lines. Analysis done by his delegation on a number of RTAs had showed that setting the figure at 0.3 per cent of trade captured on average the top 50 imports and that a figure of 0.2 per cent captured on average the top 75 imports, and that explained the two alternatives proposed. It was his delegation's view that such a test was better than an overall trade coverage test, though it remained open to other approaches (e.g., the use of qualitative benchmarks so that no major sector could be excluded), provided these were accompanied by a very robust and ambitious tariff-line measure. He conceded the point that the proposed benchmark and the "highly-traded" test could mean close to 100 per cent coverage in cases of a country where trade was concentrated in a relatively small number of tariff lines; however, parties to the RTA had little to fear in eliminating duties on those products in the context of Article XXIV. Regarding delegations' comments on the proposed alternative "highly-traded" product test, he noted that, in general, more resistance existed on eliminating duties on products in which a country was not competitive; he wondered on which products duties would be eliminated if it was problematic to liberalize those in which countries were competitive.

21. The proponent reaffirmed that the "but for" test was a transparency test only, as the application of any disciplines to the relevant products could eventually negate the flexibility that allowed countries to exempt from duty elimination up to 5 per cent of their HS lines; he remained however open to ideas in this respect. The tariff-line coverage approach was the best way to ensure that future trade developments were covered by the rule; the test represented a snapshot at entry into force and would be made only once. With respect to the view that there was a need for clarification of the ORRC requirement as well, he saw no reason for holding back the clarification of the SAT requirement on duties given that at the present time no consensus existed on the interpretation of the former; discussions on both elements could be held in parallel, but not necessarily at the same speed. He confirmed that the benchmark was to apply to RTA parties individually. He reaffirmed his delegation's position that the ten-year transition period referred to in the *Understanding on the Interpretation of Article XXIV of the GATT 1994* applied only to interim agreements, and that the opportunity provided for by these negotiations should be grasped to clarify the present irregularity and make explicit any implicit understanding; however, he would reflect further on the point made concerning GATT/WTO practice and any possible legitimization of transition periods not explicitly referred to. His delegation could go along with a longer than ten-year transition period for sensitive products and discuss further the issue; the starting point for this discussion would be that such a situation would be allowed provided that these products were covered under one of the lines not subject to duty elimination, and thus included in those lines carved out of the SAT requirement, or otherwise if the agreement was notified as an interim agreement and a plan and schedule was tabled indicating how much time was needed and the reason for it.

22. As regards S&D treatment, the proponent underlined that the proposal did not address RTAs notified under the Enabling Clause but only those notified under Article XXIV of the GATT 1994. Noting that the Enabling Clause *per se* was already an S&D treatment and that Article XXIV constituted an exception to the MFN rule, he expressed the view that the creation of too many exceptions to an exception should be avoided. Though his delegation was not closed to negotiating S&D treatment as part of the SAT definition, it would not volunteer any specific S&D proposal before having built up some consensus around the structure and detail of a quantitative SAT definition. Further, his delegation was not attracted by the idea of automatically providing a relaxation of rules for RTAs involving developed and developing countries, as this would seem to assume that trade liberalization was somehow negative for developing countries; rather, the Group should start on the premise that a single benchmark might be appropriate and consider whether adjustments had to be made. With respect to existing RTAs, only those old agreements that had lapsed would not be subject

to the new rules. Regarding the comments that the proposal seemed like a straight jacket and lacked flexibility, he noted that while flexibility should be allowed, there was a need for disciplines, among which clear quantitative benchmarks to ensure that, as RTAs proliferated, they would not become a recipe for countries to negotiate any type of agreement and assert it was an RTA, as this would undermine the multilateral trading system.

23. The proponent of TN/RL/W/179 stated that the submission had been made to advance discussions on systemic issues and was structured around three main areas. He highlighted that systemic issues had to be addressed with various lenses, namely reasonableness, the need for clear and reinforced rules, and the development dimension. Reasonableness meant that while there was a need for clear and strong rules, a certain degree of flexibility was indispensable; in that context, concepts were addressed in the submission but in a manner that would allow precision to emerge from discussions within the Group. The outcome of systemic issues' discussions should not be the lowest common denominator; however, it should take into account the fact that Members had interpreted RTAs' rules in different manners, and this had generated a number of "subsets of RTAs". The need to reinforce the rules and give clear guidelines for assisting Members in the negotiations of their RTAs was also an issue of generic systemic interest. As to the development dimension, it had a bearing on the three areas addressed in the proposal, namely coverage and SAT, reasonable length of time, and "other regulations of commerce" (ORCs). In terms of coverage, the general thrust of the proposal was that the rules should provide for a threshold based on volume of trade and tariff lines. Such a combined threshold alone would not always provide WTO compatibility, but it would represent the first of a series of steps (also involving qualitative benchmarks) that RTAs would have to comply with to be WTO compatible. Different coverage thresholds would make allowance for the different levels of development of RTA parties, notably in the case of RTAs between developed and developing countries, so that the latter could benefit from lower thresholds than the former. In terms of the reasonable length of time, the lack of a common interpretation of "exceptional cases" should be addressed by the Group; in this respect, one *ex officio* exceptional case to be considered would be the level of development of the parties. While a length of time of more than ten years would be reasonable if used by developing and least-developed countries, more effort would be needed for justifying "exceptional cases" to be applied by developed countries. As regards ORCs, and in particular the test of neutrality, it was important to agree on a consensual interpretation of the concept that would be part of a package of systemic issues to be presented to Ministers. Furthermore, the negotiations should address the need for improving the coherence and logic of present rules *vis-à-vis* RTAs involving developing countries. At present, different kinds of RTAs involving developing countries were regulated in different manners, e.g., an RTA between a developed and a developing country or between a regional developed and a regional developing bloc was subject to Article XXIV while a major RTA between developing countries would be subject to different rules. The submission therefore proposed that the regulation of RTAs involving developing countries should take into account the share of world trade affected and the effects on the multilateral trading system, so that RTAs affecting a sizeable part of world trade would be subject to stricter disciplines and transparency. The aim of such a proposal was not to open a debate on the wider question of differentiation, but rather to find a practical way to deal with this issue from an open-minded perspective.

24. The proponent further noted that the proposal did not contain figures nor provided solutions; although the level of engagement in the Group had recently increased, it was his delegation's view that it would be premature to do so. In terms of SAT - the key concept regarding internal liberalization - a first aspect was the quantitative benchmark. The background for that was twofold, namely past practices, as referred to in the WTO report WT/REG/W/46, and the Australian paper and Participants' reactions to it. The most appropriate approach for moving forward in that area would be an average between the past practice and the concerns and arguments put forward in support of a tariff-line based test. The advantage of having a combined test would be to cover both historical and potential trade; further, a single combined average would allow for accommodating, within certain limits, differences that Members might have had in emphasizing these two different benchmarks. A

qualitative benchmark would also be an integral part of the SAT test; given that the SAT test went beyond duties, there was a need for adding a wide array of concepts for assessing compliance in a qualitative manner. The submission provided an illustrative list of concepts, which though already extensively discussed might deserve further consideration: major sector; ORRCs; tariff-rate quotas (TRQs); linked to that, special sectoral safeguards, seasonal restrictions and the like; and review clauses that would increase coverage within the transition period. The question was how to combine the two tests; for duties this was quite straight-forward and most Members had used that as a base benchmark in past practice. The qualitative aspects were very important but more complex; also, fewer proposals had been made in that respect. Thus, the submission proposed that the combination of a quantitative and qualitative approach would be such that the quantitative benchmark would set the floor, establishing a "likely" WTO conformity, with the final assessment being dependent on qualitative aspects. With respect to the effects on third parties - where the key concept was ORCs - the traditional debate had focused on the definition of ORCs and there was no clear indication that consensus had been found on it. Therefore, the proposal aimed at shifting the focus from the ORCs definition as such to the neutrality test, i.e. the need for establishing criteria to measure the incidence of ORCs on third parties. In practical terms, it was proposed to start on the basis of a very broad definition of ORCs, including PROO, while focusing more on the implications of having the neutrality test as it stood today. In that context, the basic problem was that the end result had to be practical and reasonable in the treatment of ORCs. The submission identified some of the parameters that should be incorporated in this discussion. One related to the fact that if the Group aimed for a very broad scope of ORCs, it would be difficult to have a "one size fits all" for all type of regulations; a case-by-case approach might then be needed. A second parameter was based on the fact that a number of regulatory measures covered by RTAs were already dealt with in WTO Agreements; from his delegation's perspective, it would be odd if the final result was that an RTA could be found in contradiction with Article XXIV when the rules and regulations promoted by it were fully compatible with provisions under existing WTO Agreements. Finally, an incidence assessment would have to take into account the effects of complying with the rules, namely greater integration of markets and promoting trade between RTA partners, without having negative effects on third parties. In sum, the submission attempted to point to a direction and identify some of the parameters involved, and his delegation remained open to any proposals that would fill in the content within that framework.

25. Participants thanked the proponent for the submission, which helped revive attention to RTA systemic issues, and noted the preliminary nature of their comments given the late arrival of the proposal.

26. Several Participants supported the need for significant progress on systemic issues, as well as the proponent's view that the clarification of WTO rules on RTAs should be reasonable and based on existing realities, but could not aim at the lowest common denominator of Members' past practices. One Participant commended the submission as proposing a balanced and equal-handed approach towards meeting divergent ideas regarding major systemic issues in a broadly acceptable manner to all WTO members, while paying attention to the needs of developing countries. Another Participant commended the fact that the submission acknowledged that no subset of RTAs could *a priori* be excluded from the negotiations, as the Doha mandate applied to all RTAs regardless of the provision under which they had been notified.

27. Various Participants highlighted the need for an SAT definition involving both quantitative and qualitative assessments. Clarification was sought regarding the "combined average threshold" concept, in particular on how this would be calculated and on the reasons that would make such a combined average an improvement compared to two separate benchmarks. One Participant agreed that the combined average threshold could be expected to cover both the existing and potential future bilateral trade between the partners. The point was made that it was difficult to analyze the proposal in the absence of set benchmarks; however, their setting at a low level would allow major sectors or

highly traded products to be carved out. Divergent views were expressed on whether any numeric benchmark for coverage would have to be firstly based on trade coverage or tariff lines.

28. Some Participants agreed that no single benchmark should be determinative of WTO compatibility. Various Participants supported the proposal for developing an illustrative list of qualitative benchmarks for assessing coverage of RTAs. At the same time, further clarification was requested regarding the points made in paragraph 10 of the proposal on review clauses, namely (i) its relationship to the transition periods, i.e. whether all such reviews and related liberalization had to be completed within ten years; and (ii) whether such review clauses would only be available for developing and least developed country Members. Two additional factors had been proposed for inclusion in such a list, namely the possibility for third parties to have a real and fair opportunity to accede to RTAs, and the automatic extension of liberalization to all WTO Members, as proposed in the debate held on the previous submission. The need for a robust SAT requirement and for ensuring that no major sector be excluded from coverage was reaffirmed by some Participants. The point was also made that S&D should also be reflected within any qualitative benchmark.

29. Clarification was sought regarding the meaning of the statement in paragraph 15 according to which "those regulations falling under existing WTO Agreements cannot be questioned on grounds of neutrality, if the parties of the RTAs fulfil their rights and obligations under those Agreements"; illustrative examples were requested in this respect and the question was posed as to whether this applied both to customs unions and free-trade areas. Clarification was also requested on how the neutrality test would be evaluated in cases (i) where an RTA provided that thresholds for the imposition of safeguard measures applied differently for imports from parties and from non-parties; (ii) where trade remedy measures were automatically applied among the members in the process of establishment or enlargement of customs union; (iii) where anti-dumping measures were eliminated amongst the RTA's parties; and (iv) where bilateral safeguards were provided for in the RTA. Some Participants expressed support for developing a checklist of ORCs and for providing that assessment of neutrality be made on a case-by-case basis.

30. Participants generally agreed that ten years was an adequate time frame for the transition period, as also proposed in the submission discussed earlier in the meeting; it was however noted by one Participant that present rules provided for the transition periods to apply only in the case of interim agreements. Support was expressed regarding the need for clarifying the meaning of the "exceptional cases" which might go beyond the reasonable length of time; such "exceptional cases" should only apply to a limited number of products under RTAs and be duly justified. Regarding the point made that developing countries would be expected to present arguments for benefiting from longer transition periods, one Participant referred to document TN/RL/W/155, which dealt with these questions. The point was made that in any case, RTAs could provide for a transition period longer than ten years for that portion of trade falling outside the SAT requirement. In that context, it was noted that longer phase-in periods might help achieve greater coverage. Further, one Participant argued that coverage rather than the ten-year transition period should be emphasized since it was her view that the greater the degree of liberalization under an RTA, the more receptive the parties were to liberalization under the auspices of the WTO; in that context, she requested clarification on whether it was the proponent's view that completion of Article XXIV requirements within ten years was more important than achieving duty-free trade on SAT.

31. Various Participants shared the aim of exploring further flexibility to the benefit of developing members; however, it was argued, the basic requirement that RTAs should not create undue difficulties for the trade of third parties should be ensured. One Participant cautioned on addressing the issue of coherence in terms of different treatment between different types of RTAs, since most RTAs were not under the legal cover of the Enabling Clause; some other Participants agreed that coherence had to apply between Article XXIV of the GATT 1994 and the Enabling Clause. One Participant requested the proponent to provide his views regarding asymmetry, and in particular

whether any lower threshold for development reasons should still satisfy the SAT requirement. Some Participants requested clarifications on what was being proposed, in particular with respect to (i) RTAs' aspects that promote developing countries' participation in world trade (paragraph 16(a)); (ii) the different level of development of RTA parties and their share of world trade (paragraph 16(b)); and (iii) coherence issues (paragraph 17). Divergent views were expressed regarding the setting of lower SAT benchmarks for developing countries; while one Participant commended differentiation of RTAs according to the level of development of their parties and the share of world trade, in particular in cases of small and vulnerable economies and least-developed countries, some other Participants expressed concern regarding the proposal for disciplines that would have the effect of differentiating between developing countries, as reflected in paragraph 16(b). The point was made that providing for different benchmarks would go against the WTO principle that S&D treatment should be oriented towards the fulfillment of WTO requirements, including SAT. Further, it was noted that while the proponent had indicated that it was not aiming at a debate on differentiation, the language of paragraph 18 was familiar and similar to the language used in that debate in other WTO Bodies; in that context, one Participant urged extreme caution against any suggestion of going down that road as this would not be constructive towards the objectives being pursued in the CRTA. Reservations were expressed regarding any possible attempts to seek stricter disciplines on RTAs notified under the Enabling Clause. Clarification was requested on whether the proponent had doubts regarding whether RTAs actually benefited developing countries depending on their level of development. One Participant requested the proponent to provide information on the treatment it had provided for Chile, MERCOSUR and the ACPs in the context of their respective RTAs in force or being negotiated. Another Participant reiterated the need for an early engagement in concrete discussions regarding S&D treatment to be included in any new rules.

32. Reacting to the comments made, the proponent noted that the proposal did not aim at creating new categories of developing countries subject to different rules, but rather to consider, beyond any dogmatic line, that some RTAs affected a great amount of trade; these RTAs, if not appropriately regulated, could have serious effects on the multilateral trading system and notably on developing countries not party. His delegation had taken note of concerns expressed in that respect and would come back to that point at a later stage. He confirmed that countries should be free to have transition periods longer than ten years for liberalizing trade beyond the SAT requirement; the link between SAT and the reasonable time length had been addressed in paragraph 12 of the submission. An SAT definition allowing for both quantitative and qualitative assessment was a key element of the proposal; the quantitative threshold would have to be completed and supplemented by the qualitative aspect. His delegation would reflect further on how to integrate into its proposal the need to ensure that major sectors were not excluded from coverage, and the question of highly traded products. Regarding review clauses, as reflected in paragraph 10 of the submission, he pointed to paragraph 19 of TN/RL/163 which had guided his delegation's thoughts on this issue; he clarified that the question related to situations where a sector was excluded at an initial stage but a commitment existed in the RTA to carry out future negotiations on such sector. He noted that though this point had been raised in a proposal relating to trade in services, it would also apply to trade in goods. Clarifications requested regarding the quantitative and qualitative assessment, as well as the neutrality aspect would be replied to at a later meeting, when examples would also be provided. Finally, he reaffirmed that the main thrust of the proposal had been to provide a direction that accommodated various points raised by different Participants' submissions, including at the expense of moving his delegation's previous position, and he hoped that other Participants would show equal flexibility in these discussions.

33. The Chairman thanked the proponents and Participants for having engaged in a constructive discussion. These submissions would be further considered at the Group's next meeting, when detailed responses to some of the comments made regarding TN/RL/W/179 would be provided.

34. The Group held an informal debate on the basis of an informal note by the Chairman, entitled *Elements for an RTAs' Transparency Process*, circulated as Job(05)/63, and the services "mock" presentation of the Canada-Chile Free Trade Agreement, dated 21 February 2005. At the end of the informal discussions, the Group reverted back to formal mode.

C. OTHER BUSINESS

35. The Chairman informed the Group that its next meeting would take place on 13-14 June 2005.