WORLD TRADE ORGANIZATION

RESTRICTED

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Negotiating Group on Rules

SUMMARY REPORT OF THE MEETING HELD ON 14 JUNE 2005

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 14 June 2005.

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

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B. REGIONAL TRADE AGREEMENTS

3. The Chairman proposed that the Group further consider the proposal made by the European Communities (TN/RL/W/179), which had been subject to preliminary discussions at the previous meeting, as well as those made by Australia and circulated in documents TN/RL/W/173 (TN/RL/W/173/Rev. 1 in its English version) and TN/RL/W/180. He proposed to open discussions on the basis of the issues raised rather than by proposals, i.e. to address "substantially all the trade" (SAT), "transition periods", "other regulations of commerce" (ORCs) and "development aspects". After those discussions the Group could turn to a proposal which was recently submitted by a Participant.

4. The proponent of TN/RL/W/179 took the floor to respond to comments and requests for clarification by Participants raised at the previous meeting of the Group. The general nature of the paper was intentional given the long-standing gaps and entrenched Members' positions on the issues under consideration. The objective of the proposal was not to table a wish list of positions, but rather to provide a direction to the negotiations and to narrow down the parameters of the discussion. With respect to the "overall approach to systemic issues", he noted Participants' broad support for the idea of three pillars: focus on systemic issues beyond the lowest common denominator; a reasonable outcome with respect to past practices; and full account of development issues.

5. One Participant noted the RTAs' goal of complementing multilateral trade liberalization, thus providing an important supplement to the multilateral trading system (MTS); yet, the proliferation of RTAs posed challenges to the MTS and increased the need to address these systemic issues. Some Participants agreed with the proponent of TN/RL/W/179 that the starting point for the clarification of WTO rules on RTAs could neither be the *a priori* exclusion of certain subsets of RTAs, nor the lowest common denominator of Members' past practices. One Participant noted that negotiations had to be based on the recognition that Members had interpreted the relevant WTO rules differently over the years and hence adopted different approaches in their RTAs; new rules should take such differences

into account. The point was also made that the review of developing country RTAs had to take into consideration the size of the economies as well as their impact on the global trading system.

6. Clarifications were requested on the categorization of RTA's "quality" referred to in the proposals being discussed; the criteria for reaching such categorization; and whether these were acceptable terms in the WTO. When asked to provide examples of "poor quality" RTAs as referred to in paragraph 2 of TN/RL/W/179, the proponent stated that it referred to an agreement that went against, or was not fulfilling the spirit of the agreed objectives of WTO rules on RTAs, which imposed an obligation on RTAs' parties to seriously promote internal trade liberalization and not to hurt third parties. The proponent of TN/RL/W/173/Rev.1 and TN/RL/W/180 clarified that a high quality agreement was one with a SAT coverage as prescribed by Article XXIV of the GATT 1994.

7. The proponent of TN/RL/W/179 said that, in order to strike a balance among Members' different views, it was proposed that SAT be defined through a quantitative benchmark based on an average between volume of trade and tariff lines, and qualitative aspects. In the case of the former, past practices suggested that the majority of Members favoured a trade benchmark to one based on tariff lines; in that context, a weighted average with trade as the main pillar and tariff-lines as the secondary pillar was an option. This would, however, entail lengthy and complex discussions on the coefficients to attribute to each pillar; therefore, in the spirit of compromise, simplicity and transparency, his delegation had opted for a simple average between these two variables rather than a weighted average of separate benchmarks. This approach would also grant each Member some flexibility on whether to place the emphasis on trade or tariff lines. He reiterated that no numerical benchmark had been proposed, as agreement would first be required on the appropriate methodology for the calculation. The figure should in any case reflect the three pillars of the general approach. Reacting to concerns raised as to whether this average entailed a risk of exclusion of major sectors, such as agriculture, from the coverage of an RTA, he stressed that the flexibility envisaged for each pillar would be very limited; in any case, it was the view of his delegation that the exclusion of any major sector was a breach of existing requirements. Turning to the SAT qualitative aspects, his delegation was not offering specific solutions, but just pointing out issues that needed to be discussed in order to clarify the SAT concept. The proposed list of key qualitative benchmarks was of an extensive nature, so as to reflect those issues raised in various submissions and statements, as well as common RTA practice involving *inter alia* tariff-rate quotas (TRQs), seasonal restrictions and special sectoral safeguards. RTAs' review clauses were also included in the list; though often employed to improve commitments during the transition period, they further complicated the SAT evaluation (usually conducted upon notification of an RTA). In summary, the quantitative benchmark would set the floor – i.e. an RTA falling below that benchmark would be considered as non-compliant with the rules, but an RTA matching or going above that benchmark would not automatically be compliant. Qualitative aspects would also have to be factored in on a case-by-case basis, so as to have the full picture of the RTA while ensuring an ambitious SAT.

8. A number of Participants concurred with the proponent of TN/RL/W/179 that a multi-track approach to SAT was preferable to a single quantitative benchmark, since qualitative elements were just as relevant to its clarification. The point was made that a too strict benchmark could misguide Members when analysing the compatibility of an RTA with the WTO; what was crucial was to have criteria that could show, under all circumstances, whether an RTA was going in the right direction or not.

9. With respect to the question of quantitative benchmarks, several Participants agreed that SAT should be looked at from the perspectives of both trade volumes and tariff-lines coverage. Questions were raised, however, on how to combine these two benchmarks and on the weight to be given to each of them. One Participant recalled that, based on past practices, the quantitative element to SAT had primarily referred to trade volume; it would, therefore, be interesting to see whether this could be complemented with a tariff-line indicator. He indicated, however, that the level of such a benchmark had to provide for a balance between the systemic interest of not undermining the MTS and the need

for not disregarding Members' past and present practices. Another Participant was of the opinion that further study was needed on these questions; he looked forward to further collaboration with the proponent of TN/RL/W/179 on the idea of combined average thresholds and how this could be implemented in practice. One Participant noted that in setting the SAT benchmarks, due account should be taken of the different levels of economic and social development, tariff structures, trade partners, industrial structures and sensitive sectors between developed and developing Members; two sets of SAT benchmarks should be envisaged to reflect these differences, and a margin of ten per cent was suggested for illustrative purposes. That suggestion was supported by another Participant. The proponent of TN/RL/W/179 indicated his delegation's readiness to discuss possible calculations of combined averages and their implications; however, such discussions would hinge on the type of methodology applied to the tariff-line pillar. His delegation had also considered the question of differentiated benchmarks and conducted some analysis on differential quantitative thresholds with respect to trade. The results suggested that it might be better to provide differentiated benchmarks on the basis of RTA parties rather than on the basis of the RTA itself, since in the latter case trade flows and balance of trade would be decisive factors in calculating the flexibility provided for under the trade benchmark; that was not the case for the tariff-line benchmark. In spite of the methodological challenges, his delegation was open to discuss whether it was possible to have differentiated thresholds for developing countries, including LDCs, and to explore ways of doing that. Clarification was requested on whether the quantitative benchmarks referred to in paragraph 10 of TN/RL/W/179 were indicative or mandatory; it was the view of one Participant that these should be mandatory: while meeting the benchmarks did not guarantee the conformity of an RTA, since other elements had to be weighted, not meeting it would certainly mean that the RTA was not conforming. Another Participant appreciated the proposal that no single benchmark be determinative but rather that both benchmarks would be taken into account, given that the quantitative benchmark would set the floor while qualitative aspects would be factored in the overall evaluation of SAT. These views were confirmed by the proponent of TN/RL/W/179.

10. Following a request for clarification on what constituted a "major sector", the proponent of TN/RL/W/179 clarified that it was his delegation's view that there was an obligation under current rules not to exclude any major sector from the coverage of an agreement, but that such obligation had not been defined and would benefit from a clarification. His delegation was open to discuss that issue, including a combined threshold for major sectors along the line of the SAT debate.

11. One Participant provided more information on six qualitative indicators proposed at the Group's previous meeting as evaluative criteria for measuring RTA liberalization and helping the review process in the Committee on Regional Trade Agreements (CRTA); these indicators should not be considered as absolute "tests", but rather as providing a more comprehensive picture of the extent of liberalization provided by the RTA. First, the CRTA would examine how an RTA treated each party’s top exports, both to each other RTA party as well as to the world. For example, and using 30 for illustrative purposes, consideration of the RTA tariff treatment of the top 30 bilaterally-traded products would show whether each party was willing to liberalize the other party’s top exports; the RTA tariff treatment of each party’s top 30 export products to the world would provide additional insights. Second, a comparison would be done between the average preferential tariff rates applied among the RTA partners before the implementation of the RTA and those applied after full implementation. This comparison could also include a qualitative description of the prior preferential programme, if appropriate. This indicator would shed light on the extent to which RTA signatories had maintained or extended preferential benefits under the RTA. Third, a comparison of each party’s 30 highest base preferential tariff rates at the date of entry into force with the 30 highest MFN-applied tariff rates would be done. Given that commercially meaningful liberalization occurred only when the RTA resulted in a reduction in applied MFN tariffs, this indicator would help the CRTA understand the timing of commercially meaningful liberalization. In other words, if tariffs were to be reduced from applied rates, the benefits of the RTA would occur more rapidly than if there were cuts from "hypothetical" rates that were above existing applied rates; this also addressed in part the concern raised by one Participant regarding back-loading of RTAs. Fourth, a comparison of the number of

tariff lines in a party's tariff schedule one or two years before the launch of RTA negotiations to the number of tariff lines at the date of entry into force would also be done. Although new tariff lines might legitimately be created in the process of RTA negotiations, an excessive number of new tariff lines might suggest that parties had manipulated their tariff schedules for the sole purpose of meeting the tariff line coverage requirement. Fifth, the CRTA would review whether an RTA excluded major sectors from liberalization. While the SAT test permitted some residual protection, excluding an entire sector detracted from the intent of RTAs to facilitate trade between signatories to an RTA and deepen economic integration. Sixth, focus would be given to the use of TRQs in the RTA. That would include ascertaining the percentage of trade covered by TRQs upon entry into force, at an intermediary point, such as ten years, and at full implementation; considering the TRQ parameters initially and over the phase-in period to ascertain whether, for example, the initial within-quota tariff rate was set at zero, the within-quota volumes expanded over time, and the over-quota rate was eliminated. This information would help Members evaluate whether and how the signatories to the RTA were using TRQs as a liberalization tool.

12. With respect to this latter indicator, a Participant recalled that the proposal contained in TN/RL/W/179 referred to special sectoral safeguards which, given their lack of injury test, had the same economic effect as TRQs. Questions were posed on whether the information obtained under these six qualitative indicators would only serve transparency purposes or rules-based objectives as well, whether these indicators would be additional to the quantitative threshold, and how they factored in discussions relating to issues raised in TN/RL/W/179. The proponent of the six indicators replied that his delegation supported the use of the minimum percentage of tariff-line coverage as an indicator in the SAT test, and thus welcomed submissions TN/RL/W/173/Rev.1 and TN/RL/W/180. As for the relationship between the six indicators suggested and the qualitative factors identified in TN/RL/W/179, he clarified that his delegation had attached importance to those issues for quite some time; references made to these in TN/RL/W/179 had provided the opportunity to add some ideas to particular qualitative factors.

13. Highlighting that the SAT concept included two intertwined elements, namely the elimination of duties and the elimination of "other restrictive regulations of commerce" (ORRCs), one Participant noted the importance of further discussing SAT qualitative aspects, since these would have to be factored in the quantitative assessment of the concept. Furthering that point, one Participant said that the consideration of ORRCs - one of his delegation's primary concerns in this negotiation - would certainly imply a debate on the application of trade remedy measures between RTA partners. Acknowledging Participants' interest to discuss the different elements, especially with regards to ORRCs, the proponent of TN/RL/W/179 indicated that the two issues to be addressed were the definition of ORRCs, and the list of exceptions provided for in paragraphs 8 (a)(i) and (b) of Article XXIV of the GATT 1994 (more specifically whether it constituted an illustrative or exhaustive list). In spite of this being a long standing issue, he welcomed the opportunity to engage in such discussions with a view to finding solutions.

14. As for transition periods, the proponent of TN/RL/W/179 stated that they existed largely in order to deal with developing countries' needs and concerns, given their lesser capacity to buffer for structural adjustments resulting from the elimination of tariffs and other restrictions on trade due to an RTA. Developing countries should then be allowed a transition period of longer than ten years for a limited set of products, and SAT should be calculated at the end of the transition period. The proponent of TN/RL/W/179 was of the view that discussions should focus on two questions, namely under which circumstances a country could go beyond the ten-year transition period, and how to factor this in the calculation of SAT. In this respect, the proponent of TN/RL/W/173/Rev.1 and TN/RL/W/180 reiterated her delegation's concerns over back-loading. Their proposal to calculate SAT at the beginning of the ten-year transition period and that duties be eliminated on at least 70 per cent of tariff lines at the Harmonized System six-digit level on entry into force was designed to minimize such a risk. Her delegation was open to discuss special and differential (S&D) treatment for developing countries in that context, as put forward by the proponent of TN/RL/W/179. The point

was made that while back-loading could be a concern, it would not be a problem as long as the end result would be a highly ambitious RTA. It was suggested that this matter could be debated in the context of the discussions on the review clause, which could also include a common practice of many RTAs to postpone the implementation of elimination commitments.

15. One Participant recalled that paragraph 18 of TN/RL/W/180 asserted that only those RTAs notified as interim agreements could have phase-in periods, otherwise they had to comply with the SAT test at the time of entry into force; that implied that the identification by the parties to an agreement of its "interim" nature had legal significance. It was his delegation's view that nothing in Article XXIV of GATT 1994 supported that assertion; rather, the only requirement applying to interim agreements was that found in paragraph 5(c), namely that it included a plan and schedule for the formation of the free-trade area or customs union within a reasonable length of time. That was corroborated by the Members' approach throughout this Article's history: Article XXIV of the GATT 1994 addressed the RTA's content, but not its title. He referred to several agreements (European Economic Community-Spain, United States-Israel, European Communities-South Africa, and the North American Free Trade Agreement (NAFTA)) as some examples of RTAs where discussions on the "reasonable length of time" had been held even though none of them had been notified as interim agreements. The suggestion that an RTA had to be notified as an interim agreement to be considered an interim agreement exalted form over substance, ignored the text of Article XXIV of the GATT 1994, and disregarded GATT and WTO practice and panel reports. It was thus argued that the 1994 Understanding applied to all agreements with phase-in periods and schedules, and it allowed transition periods beyond ten years so as to obtain a better agreement. He referred to two GATT panels[1] that had evaluated particular RTAs that qualified as an interim agreement by focussing on their content and not their title. Finally, he noted that greater trade liberalization over a longer period of time was preferable to a less ambitious RTA with a rigid adherence to the ten-year rule. The proponent of TN/RL/W/180 remarked that if a Panel was called upon to look at Article XXIV:7(b) of the GATT 1994, it might not necessarily reach that interpretation. One Participant pointed out that several RTAs went beyond the ten-year rule and noted that the question of an acceptable transition period had to be seen in light of the fact that the longer the transition period, the greater the problem related to tariff reduction. The point was made that RTAs ambition should not be jeopardized by a rigid application of existing requirements regarding transition periods.

16. As for the question of "neutrality", the proponent of TN/RL/W/179 recalled that the proposal aimed at shifting the focus from the definition of the highly complex concept of ORCs to the application of the existing neutrality test to this "evolving concept", as it had been described in the report of the Panel on *Turkey – Textiles*.[2] These discussions could be problematic; from a legal perspective, it was highly feasible that an RTA could be found in contradiction with Article XXIV of the GATT 1994 even though the rules and regulations promoted by it were fully compatible with provisions under existing WTO Agreements, e.g., in the case of sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT). It seemed odd that as a result of the "necessity test" established in rulings by the Appellate Body on *Turkey – Textiles* and by the Panel on *US – Line Pipe*[3] in order for parties to an RTA to derogate from WTO rules, GATT Article XXIV could influence or even diminish Members' rights and obligations under other WTO rules. The proposal that "regulations falling under existing WTO Agreements cannot be questioned on grounds of neutrality, if

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[1] European Community - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region, L/5776, 7 February 1985 (unadopted), e.g., paras. 3.7, 3.8, 3.102, 3.104, and 4.5-4.8; and EEC- Member States' Import Regimes for Banana, DS32/R, 3 June 1993 (unadopted), e.g., paras. 240 and 358.

[2] Appellate Body Report on *Turkey – Restrictions on Imports of Textile and Clothing Products*, adopted on 19 November 1999 (WT/DS34/AB/R).

[3] Panel Report on *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, adopted on 8 March 2002 (WT/DS202/R).

the parties of the RTAs fulfil their rights and obligations under those Agreements", as contained in paragraph 15 of TN/RL/W/179, was a reaction to that situation; notwithstanding, existing rulings would have to be factored in these discussions. As to the examples, his delegation had confined its legal analysis to SPS and TBT measures; however, the Group could use the list of ORCs identified in document TN/RL/W/116 as a starting point for discussions. While his delegation agreed that WTO-plus provisions in RTAs should be factored in as positive elements in the evaluation of an RTA compatibility with WTO rules, the evaluation of ORCs should be conducted on a case-by-case basis and should comprise the implications of applying the neutrality test to each regulation potentially falling under the concept. To the suggestion that this process should include anti-dumping, safeguards and like-measures, he noted that these were generally considered as ORRCs rather than ORCs; nevertheless, his delegation was prepared to include anti-dumping in the scope of these discussions.

17. Clarifications were sought regarding the principle of neutrality outlined in paragraphs 13-15 of the proposal circulated as TN/RL/W/179, in particular its relationship to preferential rules of origin; whether paragraph 15 implied that conformity of only preferential measures could be questioned; and which body would be responsible for deciding on the conformity of measures *vis-à-vis* a given WTO Agreement.

18. Turning to the proposals on "Development Aspects" contained in TN/RL/W/179, the proponent stressed that the aim was not to create 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 MTS and notably on developing countries not participating in the RTA. The basis for the reasoning in paragraph 16(b) was the requirement contained in the rules themselves, that RTAs had no negative effects on third parties, and the assumption that RTAs between countries, or groups of countries, accounting for a sizable share of world trade were more likely to have systemic implications on third parties. The aim of the proposal was to move from a *de facto* flexibility generated by the imprecision of the existing rules to a *de jure* flexibility, thus not constituting a revision of Article XXIV of the GATT 1994 but rather an interpretation of the existing flexibility, with the level of this flexibility being open for negotiation. Paragraph 18 did not aim at an *a priori* differentiation between developing countries with respect to Article XXIV of the GATT 1994; it was his delegation's position that every developing country was entitled to go beyond the ten-year transition period if it had a justifiable case. He noted that paragraphs 16(a) and (b) had been based on the need for coherence among the three sets of WTO rules on RTAs, which were related to each other in various ways, citing as an example that GATS Article V contained explicit S&D provisions but Article XXIV of the GATT 1994 did not – and that was an issue proposed for amendment. It was important to ensure that the requirements among the three sets of rules on RTAs be logical from the point of view of the existing goals they enshrined (i.e. to promote internal trade liberalization and not to hurt third parties). His delegation was open to discuss ways of doing that; the proposed criterion of sizable share of world trade represented one way of accommodating concerns expressed by some developing countries with respect to the legal integrity of the Enabling Clause. Another suggestion to avoid touching the Enabling Clause would be to work on the basis of what had already been agreed upon as a voluntary guideline in APEC. Finally, he noted the preliminary nature of these discussions and reiterated his delegation's readiness to discuss these issues in an open way.

19. Acknowledging the concerns raised in paragraph 16 of TN/RL/W/179, one Participant cautioned against making assertions in the absence of comprehensive empirical data; further, a normative judgement could not constitute a credible basis to subject RTAs under the Enabling Clause to the criteria of Article XXIV of the GATT 1994. That North-South RTAs could have at least as high a developmental impact as those RTAs falling under the Enabling Clause, and that RTAs among developing countries that were relatively sizeable actors in world trade could have meaningful implications for other WTO Members were assertions which should be questioned. Therefore, it was

argued, it seemed sensible to assume, as it had been the case so far, that RTAs under the Enabling Clause had a greater impact on development than other RTAs.

20. Following these discussions, the Chairman suggested that the Group consider, in a preliminary manner due to its late arrival, the submission made by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, circulated as TN/RL/W/182.

21. The proponent of TN/RL/W/182 said that the aim of the submission was to address the genuine concerns of the dramatic proliferation of RTAs in the past decade. The workload of the CRTA was heavy, as it was that of a private business entity trying to sell its products to the world market: in addition to the 148 tariff schedules, there were some 300 sets of extra schedules with different transition periods; and worst of all, the number of RTAs was increasing at a rapid speed. This very serious situation, of common concern to both governments and the private sectors, needed to be addressed urgently. The Group had been mandated to clarify and improve WTO disciplines on RTAs; while in-depth discussion had taken place on transparency and some substantive rules, no attempt had been made to address the core issue of the proliferation and the impact of the RTAs on the MTS, let alone to vent ideas and approaches on how to deal with it. WTO Members had a legitimate right to establish RTAs, thus being exempted from the MFN principle and being legally allowed to accord preferential treatment to their RTA partners. Drafters of the GATT had formulated Article XXIV with the conviction that RTAs were building blocks for the MTS and a supplementary tool to reach the ultimate goal of multilateral free trade. Yet, somehow, the humble and good will of the drafters 50 years ago did not foresee the monstrous development of RTAs of the present day. If Members did not deal with this situation at the present time, they would soon see multilateral negotiations getting less and less meaningful. It would not be surprising if, some years ahead, Members would be confronted with the situation where the successful result of a new round of negotiations would only matter to some 10 or 20 per cent of world trade, with the lion's share of world trade governed by RTA rules rather than multilateral trade rules. Against these considerations, his delegation was of the view that the work to clarify and to improve RTA disciplines under the WTO framework would never be complete if they were not prepared to do or at least say something with respect to the core of the problem. He indicated that there were two distinct mindsets towards signing RTAs. The first one was to reach a higher level of trade liberalization at a pace faster than multilaterally, with the aim of making the global market more open and liberal; those sharing this mindset were willing and ready to share the fruit of their trade liberalization with those who were also willing and ready to follow suit. By doing so, the RTAs were in fact contributing to the ultimate goal of creating free and open world trade. The other mindset, however, was to create preferential treatment among a limited number of parties; once those trade preferences had been secured, they were not meant to be open to, or shared by outsiders. It was his delegation's view that an RTA with an open mind was a building block to the WTO framework, while an RTA with a closed and narrow mind was in fact a stumbling block to the WTO framework. The submission was to be seen against such belief and conviction; the proliferation of RTAs should be redirected by sharing the trade benefits of open-minded RTAs with those ready to participate.

22. The proponent of TN/RL/W/182 indicated that the proposal could be divided into two parts. The first one referred to the strong need for Members to declare their political intentions to open their RTAs to outsiders. For illustrative purposes, he referred to the decrease in numbers of RTAs due to the enlargement of the European Union from 15 member States to 25, as well as the recent conclusion of the Pacific-4 Agreement, the latter being a good example of a fourth party joining the club, instead of signing three separate and additional agreements which would further complicate the situation. The second part of the proposal outlined procedural arrangements. In this respect, he stressed that no coerced obligation for Members to blindly open their RTAs to just anyone was requested, but rather the sincerity of RTA parties' to be prepared to negotiate with outsiders, and for outsiders to be prepared and willing to extend their level of trade liberalization to match that of the RTA and then to be welcomed to join it.

23. Participants indicated that they could only provide preliminary comments due to the late circulation of the submission. Several Participants concurred with the proponent that accession clauses were generally a good idea. It was noted that numerous RTAs contained accession clauses and several examples were offered (Australia-New Zealand, New Zealand-Singapore, Thailand-New Zealand, NAFTA and the recently concluded Pacific-4, more commonly known as the Trans Pacific Strategic Economic Partnership). It was however observed that accession clauses in those agreements were not of a mandatory nature; decisions on accession, and its relevant terms, were left to the RTA parties. The point was made that paragraph 19 of the submission appeared to be of another nature, as its wording suggested that RTA parties could not reject an accession application and had to commence negotiations upon receipt of that application. Clarification was sought on whether such interpretation was correct; whether parties could refuse to allow a Member to accede once the negotiations had commenced; the meaning of "adequate opportunity" to non-parties to accede and of "respond sympathetically"; the "reasonable conditions" referred to in paragraph 8; and whether the suggestion that the RTA preferential treatment be extended to the acceding party meant that the latter would adopt the existing preferential treatment of one of the RTA parties or this would be subject to separate negotiations.

24. Several Participants noted that proving for a mandatory accession clause would be extremely burdensome, politically sensitive and difficult, and could potentially lead to a situation where an RTA could expand to create an alternative to the WTO; they cautioned the Group and the proponent on embarking into such a discussion. Though acknowledging that accession clauses could benefit the MTS by furthering regional integration and liberalizing trade, as included in the Bogor goals agreed upon in the 2004 APEC meeting, one Participant noted that RTA negotiations were a complicated matter with significant give and take by the parties; it was therefore unrealistic to ask any country to bind itself in advance to enter into negotiations with every country that requested accession, regardless of whether or not such an accession made sense, and whether or not there were any common economic interests. Moreover, the possibility of acceding to an RTA always existed, if the conditions warranted it; even if the RTA did not explicitly provide for accession, its signatories could suspend, amend or renegotiate the RTA if they concluded that another party should be added. That, it was noted, had happened when the United States-Canada FTA was suspended and the NAFTA negotiated. Some Participants highlighted that in RTA negotiations, considerations other than trade came into play and might be more important than trade itself; hence, RTA parties would probably not want to be obliged to enter into accession negotiations with a non-party without taking into full account these considerations. One Participant questioned whether the Group had the mandate to include such provisions in future possible RTAs that Members might conclude. It was further noted that a mandatory accession clause might not provide the appropriate answer to the concerns raised by the proponent; as the Sutherland Report had found, the best response to the concerns about preferential agreements was a multilaterally-agreed reduction of MFN rates and greater discipline of RTAs within the WTO. One Participant expressed interest in continuing discussions on some of the proposals made, including the insertion of accession provisions in RTAs and making mandatory that parties consider an accession application. In that respect, another Participant pointed out that there was a difference between requiring RTAs to include an accession clause and requiring such a clause to be drafted in a particular manner; she added that her delegation supported the idea of accession clauses in RTAs.

25. The proponent provided preliminary replies to the points raised. He reiterated the importance of reducing the number of RTAs and opening them up so that the trade benefits they had created were shared with others. The WTO itself was a good example of such aims, since it had its own accession clause to which all Members were committed. Despite the existence of a "non-application" clause in the WTO (Article XIII), Members had chosen not to invoke it because of their commitment to share trade benefits and conduct normal trade relationships amongst each and every WTO Member; he hoped that this was still their common goal. He reminded Participants of the objectives enshrined in Article XXIV of the GATT 1994, and noted with interest that some Participants had pointed out that RTAs included all sort of non-trade considerations. He shared that view, in the sense that an

increasing number of RTAs were being used as a tool to pursue non-trade objectives instead of genuinely promoting free trade amongst parties; these concerns were at the forefront of his delegation's proposal. The proposal was a call on Members to address these core issues, not only for the benefit of the MTS, but also for signalling a message to the outside world that WTO Members were serious in promoting the MTS. While the procedural issues outlined in the proposal raised several genuine concerns, such as multiple simultaneous trade negotiations, resource constraints and geographical considerations, the proposal advocated that Members commit themselves to good faith in replying to requests for accession negotiations, so as to ensure equal-footing participation wherever it was appropriate. While acknowledging the concerns raised, the proponent referred to several examples of RTAs with accession clauses where in reality such concerns did not manifest. Finally, he recalled that the Group's mandate was to clarify and improve the RTA situation and that this would not be the case if the focus was to be limited to transparency issues; therefore, he reaffirmed that the proposal did fall under the Group's mandate.

C. OTHER BUSINESS

26. The Chairman informed the Group that the next meeting was scheduled for 25 and 26 July, but that he would consider at a later stage whether two full days were needed; in any case, he would consult delegations on a suitable format for the next meeting. The meeting's duration would depend on the topics to be discussed, in particular whether new proposals on systemic matters were received; he also noted the busy July schedule because of the work in other Negotiating Groups. He further announced that the Group's meetings devoted to RTAs until the end of the year had been tentatively scheduled for 3-4 October, and 31 October-1 November.

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