WORLD TRADE ORGANIZATION

RESTRICTED

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Negotiating Group on Rules

SUMMARY REPORT OF THE MEETING HELD ON 25 JULY 2005

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 25 July 2005.

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

B. REGIONAL TRADE AGREEMENTS

3. The Chairman proposed that the Group further consider the submission made by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, circulated as TN/RL/W/182, which had been subject to preliminary discussions at the previous meeting. Following that, the Group could concentrate on the various issues raised in the proposals made by Australia (TN/RL/W/173 - TN/RL/W/173/Rev.1 in its English version - and TN/RL/W/180) and the European Communities (TN/RL/W/179). After those discussions, the Group could turn to a proposal recently submitted. The proponent of TN/RL/W/182 expressed appreciation for the comments made by some delegations at the Group's previous meeting, despite the belated submission of the document. It was his hope that Participants, after some time for reflection, could at that stage provide additional inputs. To facilitate that day's discussion, his delegation had prepared a note that contained answers to some queries previously raised which was made available in the room and would later be circulated as an official WTO document. To introduce that note, he would explain the mandatory nature of the proposal, which was its most crucial element, and also summarize replies to the other issues. In response to the view that it was unrealistic to ask Regional Trade Agreements (RTAs) parties to bind themselves in advance to enter into negotiations with every country that requested accession, he clarified the intention of paragraph 19 of TN/RL/W/182 as follows: open accession would be the principle, but the acceding country would have to satisfy the conditions set out by the RTA's parties before the negotiations could start. The paper duly acknowledged that many factors were involved in the decision-making process of RTA negotiations, without providing any specific ranking or weight for each factor; the proposal accepted that deciding on the terms of accession was the autonomous right of the parties. Despite the divergent views expressed regarding the desirability of a mandatory rule; he hoped that this would not make Participants overlook the obligation to minimize trade distortions arising from RTAs. His delegation was open to better options to deal with the problem of trade discrimination, which was growing rapidly.

4. Turning to the claim that even if an agreement did not explicitly provide for accession, its signatories could at any time suspend, amend or renegotiate it if they concluded that another party

should be added, he noted that if Members could appreciate the positive effects of open accession, that should become an explicit rule. Also, as highlighted in the paper, there was the problem of some RTAs that had become closed trading blocks, with the parties simply shutting their door to accession requests; his delegation had strong doubts that such outright rejection fitted well with the view of RTAs aimed at promoting the liberalization and expansion of global trade. He then noted that the proposal mainly focused on the "consultation" stage of the RTA negotiation process, not on the "negotiation" stage; it suggested adding some procedural rules to the WTO so that non parties would have the possibility to notify their interest, and RTA parties would have to consider such request in good faith. That did not mean that all requests would result in formal negotiations. RTA parties might decide to reject or put off a request for accession, because it made no sense in economic terms, or it might add too much burden to their negotiation capacity, for example. He stressed that the paper did not suggest any parameter to assess such a decision; it simply required that the process and results of the consultations be transparent. The proponent also concurred with some Members' views that RTA negotiations were complex and involved a significant give-and-take process, and that a mandatory accession clause might not provide the appropriate answer to the concerns raised. He stressed that the proposal did not intend to over-simplify the difficulties of entering into RTA negotiations, but rather to tackle the real problems piece by piece. To illustrate how the proposal might work out compared with other possible solutions, he put forward the hypothetical example of an RTA between countries A and B entering into force on 1 January 2006, and of a small third country (C) which competed with country B in country A's market and this market represented 50 per cent of its total exports. Options open to country C were to try to persuade Members to eliminate or significantly reduce their tariff and non-tariff barriers in the Doha Round (or even simply do so voluntarily), or to request negotiating an RTA with country A, or to request accession into the agreement between A and B. In either case, country C risked being rejected without due consideration. The proposed procedure would oblige country A at least to give sympathetic consideration to the request, and would offer an opportunity to offset the trade distortions caused by the RTA. He reiterated that the option of accession to the RTA between A and B was preferable because it reduced the need for creating new RTAs, and avoided the problem of adding more complexity to the trading system.

5. The proponent of TN/RL/W/182 continued by saying that his delegation did not agree that the proposal fell outside the Doha mandate, since this encouraged Members to improve the current RTA-related disciplines and procedures. That being said, his delegation would be happy to work with other Participants to improve the proposal and find more practical ways of solving the real problems. In response to concerns expressed that handling too many requests at the same time could be problematic, his delegation doubted that this would happen often; nevertheless, the proposal did not require all consultations to be held within a certain deadline, thus providing flexibility to RTA parties to arrange their negotiation schedule according to their capacity. With respect to the meaning of "respond sympathetically" and "accord in good faith adequate opportunities", he noted that the term "sympathetic consideration" was used in Articles IX, XXII and XXIII of the GATT 1994 and in paragraph 15 of the *Understanding on the Interpretation of Article XXIV of the GATT 1994*; his delegation's proposal had correctly adopted the terms and the spirit of the WTO Agreements. He also noted that dispute settlement panels had in some cases made reference to the term "good faith", and his delegation was not aware of any Member criticizing that such interpretation had encroached Members' sovereignty. However, if a Member had any specific concern about the term, his delegation was willing to hear views and work on a compromise language. He reiterated his delegation's intentions, namely that RTA parties do not reject an accession request without any explanation and show good will by entering into preliminary discussions about the feasibility of engaging in formal negotiations; the terms for the accession negotiations, or the decision not to enter into negotiations would be agreed upon during these consultations. Finally, referring to the question of the treatment of customs unions, which had been raised in bilateral consultations, he noted that the proposal intended to apply to all kinds of RTAs that had potential trade-distortion effects, either customs unions or free-trade areas, and to seek a balance between the discretion of RTA parties when deciding upon an accession request, and the rights of non parties that their request be considered in

good faith. While his delegation had observed that at the present time such intended balance might not be politically feasible, he urged Participants to take more bold action for dealing seriously with the emerging monsters of regional trade blocks, in addition to their efforts on procedural rules. He reiterated his delegation's appreciation for the inputs received and its readiness to accommodate comments to improve the proposal; it was his delegation's hope that the proposal would help in directing Members' attention to the serious problem posed by RTAs that needed to be fixed.

6. Some Participants, while generally considering accession clauses as a good idea, remarked that many RTAs contained them and that, in their absence, it was always possible to accede to an RTA when the conditions warranted. Other Participants said that it did not seem that RTAs had clauses preventing their expansion and that the absence of multilateral rules did not stop accessions. One Participant considered that developing a rule for accession clauses appeared superfluous, and he argued that the Group should not devote resources to it. The proponent replied that the proposal had been prepared from the point of view of non parties that could not accede to an RTA; it offered a positive remedy to counter the negative effects of RTAs without encroaching on the sovereignty of RTA parties, by simply requiring them to consider a request for accession in good faith. Adding that the possibility for non-parties to really negotiate their accession only existed in a few RTAs in force, he stressed his delegation's view that the increasing number of bilateral RTAs was not a positive development for the Multilateral Trade System (MTS).

7. Several Participants reiterated that negotiating an RTA was a complex and sensitive process; asking a country to bind itself in advance to enter into negotiations or even consultations with every country that requested accession was impractical, and raised a number of problems (e.g., *vis-à-vis* resources). The proponent concurred that the proposal, which had been drafted from the non-parties' perspective, would increase the burden for RTA parties; however, there was a need to find a balance between the rights and obligations of both parties and non-parties to RTAs.

8. In the context of discussions on the proposed mandatory accession clause, Participants advanced some alternative ideas to deal with the negative, trade-diversionary effects created by RTAs. One Participant said that, as noted in the Sutherland Report, the best response to the concerns about preferential agreements was a multilaterally-agreed reduction of MFN rates, through an ambitious market access outcome in the Doha Round, and greater discipline of RTAs within the WTO. A few Participants indicated that the most effective approach would be to extend RTA gains either through a unilateral opening of RTAs to all WTO Members (within a period left to the discretion of the parties), or by examining how RTA trade liberalization could be bound in the WTO. That approach, it was noted, would be more preferable than increasing membership in existing RTAs, as the risk existed of larger regional groups turning into "mini-WTOs", thus reducing the level of commitment to multilateralism from parties to RTAs. The proponent indicated his delegation's support for the multilateral extension of preferential concessions after a given time period, and concurred with the view that a successful conclusion of the Doha Round would alleviate the concerns of RTA non-parties. He noted however that his delegation's proposal had resulted from a reflection of all these alternatives, keeping in mind the need to find a compromise solution that would provide a balance between what was feasible by WTO Members and what was practical.

9. Some Participants noted that RTAs that conformed with WTO rules were supportive of the MTS and disagreed with what appeared to be the proponent's point of view that RTAs were trade-distortive rather than trade-creative. The proponent explained that the qualification of RTAs as "good" or "bad" had to be made in relation to a specific situation; i.e. while "high level" RTAs might be good for expanding intra-trade among its parties, they might be bad for non parties, as illustrated by the example he had provided regarding countries A, B and C.

10. Replying to questions on whether the proposal was for the mandatory consideration of an application for accession, for the mandatory consideration of the terms of accession, or simply amounted to a "best endeavours" clause, the proponent referred to the first point of paragraph 19 of

TN/RL/W/182 as a mandatory negotiating process, while points 2 and 3 dealt with procedural issues. The proposal did not oblige RTA parties to start negotiations upon receipt of a request for accession, nor did it detract from the parties' right to reject such a request. The proposed WTO rules would provide non-parties with the possibility of expressing interest in acceding to an RTA, and that the RTA parties should consider and explain the reasons of their decision through the WTO. The imposition of such transparent procedural rules would put pressure on RTA parties to consider seriously and in good faith any request for accession. As to the scope of the proposal, one Participant asked whether the aim was that such multilateral accession clause be incorporated in all WTO provisions related to RTAs (i.e. Article XXIV of the GATT 1994, Article V of the GATS and the Enabling Clause) or only in some of them. The proponent saw no reason for a different treatment in that respect, confirming that the proposal would also apply to RTAs concluded among developing countries under the auspices of the Enabling Clause.

11. One Participant requested the proponent to give some practical examples of the problems faced by non-parties to RTAs that would require the establishment of the proposed multilateral accession clause. Nothing, he said, prevented countries from writing to various RTAs requesting accession. As regards the real damage that could be caused by RTAs, he argued that it was precisely the object of the negotiations to counter the fact that the MTS had not been fully capable of handling the surge in RTAs. With respect to RTA coverage, the negotiations aimed at raising the standards so that RTA negotiations were engaged only when the countries involved were serious about it; as to the neutrality aspects, negotiations were aiming at ensuring that once RTA negotiations were engaged, the countries should make sure that they minimized damage to non parties. It was also indicated that some of the concerns raised by the proponent were addressed in the negotiations on "RTAs' Transparency". Reacting to these points, the proponent said that given that a mandatory accession clause did not seem feasible, his delegation had proposed a mandatory procedural rule that would at least impose some pressure on RTA parties to refrain from building up closed RTAs. As to the negotiations on RTA rules, his delegation fully supported efforts being made on "RTAs Transparency" as a means to ensuring that RTAs conformed to WTO principles. He also emphasized his delegation's support for requiring RTAs to have the highest coverage possible, despite the effects that this might have on non parties. He stressed however that the proposal was presented against a background of lagging discussions on "RTAs' Neutrality", and of difficult negotiations under Article XXIV:6, especially for developing country Members. One Participant wondered whether it would not be better to evaluate this proposal in light of what would have been achieved in the negotiations regarding the coverage and neutrality aspects of the relevant WTO provisions. The proponent concluded by expressing appreciation for the comments made, acknowledging that the proposal had presented a purist approach. He hoped that it would help the Group to focus on the concerns raised, which his delegation would like to see addressed in the negotiations.

12. Following these discussions, the Chairman invited Participants to comment on issues raised in the proposals made by Australia, circulated as TN/RL/W/173 (TN/RL/W/173/Rev.1 in its English version) and TN/RL/W/180, and the European Communities, circulated as TN/RL/W/179.

13. One Participant indicated that his delegation had a number of comments to make. First, the proposal to define "substantially all trade" (SAT) through the tariff line approach, as contained in TN//RL/W/173/Rev.1 and TN/RL/W/180, appeared to be facing difficulties and might take a long time to gain all Members' support. His delegation would be prepared to give further consideration to that proposal on the basis of the presentation of good justifications. The proponent's argument that the fluctuation of trade flows represented a reason for not taking the trade coverage approach could possibly be regarded as just an indication of the difficulty that a rigid numerical benchmark accurately reflected the variant and fast moving trade status. While his delegation favoured a SAT definition based on the trade flows approach, it could also support a combined average threshold for trade and tariff lines, as proposed in TN/RL/W/179, as an alternative and compromise solution. It would, however, not appear appropriate to base such a combined threshold on a simple average calculation of figures of trade coverage and tariff line, as that would amount to compare and mingle two sets of

statistical figures of quite different dimensions. Second, he noted that a numerical benchmark could contribute to ensuring further transparency of RTAs; however, as regards consistency with WTO rules, a more comprehensive and qualitative assessment of the RTA was needed, including the examination of its contribution toward enhanced world trade flows, its potential impact on non parties and its positive effects toward further development of developing country Members. Third, further consideration was also needed on the scope or definition of "other regulations of commerce", which should proceed at the same pace as discussions on the coverage benchmark. Fourth, he questioned the view that RTAs which significantly reduced trade with non-parties should be treated in the same manner as those that had limited negative impact on non-parties; the Group should rather consider providing for differentiated approaches. In this context, he proposed that case studies be initiated on the economic and welfare effects of various RTAs upon non parties and the international community, so as to provide for an accurate evaluation of their qualitative aspects. Fifth, the Group should also consider RTAs' contribution toward further advancement of the MTS; in particular, WTO-plus elements in RTAs (e.g., bilateral agreements on investment) should be legitimately evaluated when assessing its consistency with WTO rules. Sixth, it was important to re-examine and streamline the issues discussed so far in relation to transition periods. His delegation had interpreted the argument that a ten-year transition period applied to interim agreements to mean that the period would apply to the RTA as a whole, but not for individual tariff lines. If that understanding was correct, he noted, any flexibility afforded to the transition period of individual products might depend on the interpretation of SAT: a deviation from the transition period could be determined just by allowing for an exception from the SAT rule. In this sense, he asked the proponent of TN/RL/W/173/Rev.1 and TN/RL/W/180 whether, in light of the very strict thresholds proposed therein, it would be possible that any product be allowed a transition period extending beyond ten years. Finally, he noted his delegation's openness to discuss the clarification of the transition period rule and deviations from it. Another Participant indicated that his delegation had a number of questions for the proponent of TN/RL/W/179, but that these would be provided at a later stage.

14. Given the extensive and complex nature of the comments made and questions raised, the Chairman indicated that discussions would be deferred to the next Group's meeting. The Chairman then suggested that the Group consider, in a preliminary manner due to its late arrival, the submission on RTAs made by China, circulated as TN/RL/W/185.

15. The proponent of TN/RL/W/185 noted that the negotiation on RTA rules had been revived in 2005 with a number of useful submissions focusing on SAT. His delegation's recently tabled submission set out a few comments or proposals concerning some core systemic issues in RTA rules negotiations based on the Doha Mandate. He observed that RTAs played an important role in the promotion of economic development, and enhancement of economic relations and integration among nations and regions. However, it had long been the case that due to the ambiguity in GATT relevant provisions for RTAs, Members had differed in their interpretation and/or application of these rules. Recent years had witnessed a new trend, with developing country Members paying increasingly more attention to the role of RTAs in their own development process, and RTAs among them were also growing. The fact that economic integration in the form of RTAs had become a core part of the development strategy for many developing country Members was an important reason why the Doha Ministerial Declaration required that the developmental aspects should be taken into consideration in RTA rules negotiations. The proponent then enumerated the main elements in the submission. First, RTAs, which were deemed to be supplementary to the MTS, played an important role in the promotion of world economic development; however, the multilateral rules needed clarification and improvement. Second, the clarification and improvement of RTA rules should support the development strategy of developing countries through regional integration by providing a supportive multilateral framework, thus faithfully reflecting the Doha Mandate. As to the substantive requirements in RTA disciplines (e.g., SAT), special and differential (S&D) treatment should be granted to the developing country Members to allow them to enjoy a lower threshold based upon the principle of less-than-full reciprocity. Third, the very nature of the Enabling Clause predetermined its difference with Article XXIV of the GATT 1994; RTAs concluded according to the Enabling Clause

should be governed by that clause. Fourth, the ten-year transition period was an advisable timeframe; only developing countries could take advantage of "exceptional circumstances" and have the right to go beyond ten years. Fifth, any newly clarified RTA rules should be retroactive and applicable to all RTAs. He stressed that his delegation would be very happy to further discuss its submission and other issues concerning the clarification and improvement of RTA rules with other Members within the mandate of this Negotiating Group.

16. Participants thanked the proponent for the proposal, and indicated that they could only provide preliminary comments due to the late circulation of the submission. Some Participants welcomed the references made to proposals already tabled, and the additional direction provided *vis-à-vis* some of the issues raised therein.

17. Some Participants highlighted the importance of differentiated benchmarks as provided for in paragraph 9 of the proposal and others noted their openness in providing for appropriate S&D treatment. To the view that this debate should be left for a later stage, once it became clearer which new disciplines were going to be agreed upon, the proponent, supported by some Participants, replied that consideration of S&D issues could not be separated from discussions related to the clarification and improvement of Article XXIV disciplines; they should be held in parallel. Participants concurred that the Doha Mandate directed the Group's attention to the developmental aspects of RTAs, and that these had the potential to enhance development prospects. The point was however made that RTAs also needed to operate within the rules-based system of the WTO, in particular when involving Members accounting for an increasingly large part of international trade, and that the interests of third parties had to be safeguarded so as to minimize the trade-distortive effects of RTAs. One Participant wondered whether the proponent could provide practical ways to ensure that the particular situation of countries, especially those at varied levels of economic development, would be taken into account when phasing in commitments on RTAs.

18. Participants acknowledged the existence of some differences in the rules contained in Article XXIV of the GATT 1994 and the Enabling Clause. While some Participants concurred with the statements provided in paragraph 7 of the proposal, others noted that such differences should not be extended to all issues under negotiation, and they requested the proponent to clarify its position in that respect. In particular, some Participants noted that transparency requirements should apply equally to RTAs notified under Article XXIV and the Enabling Clause; attention was, however, brought to the fact that notification and review of Enabling Clause RTAs would be in relation to the provisions of the latter, and not to those of GATT Article XXIV standards. The proponent clarified that his delegation's position, as expressed in paragraph 7 of the proposal, did refer to transparency aspects of RTA rules. One Participant noted that no permanent two-tiered system should exist in the WTO, and that Article XXIV of the GATT 1994 and the Enabling Clause needed to be looked at together, particularly given that RTAs were becoming increasingly popular. The system being designed within these negotiations, she argued, would take the WTO into the future and Members should ensure that the basic disciplines would be implemented over time. In this context, concerns were expressed regarding the possibility that S&D treatment resulted in the lowering of all WTO standards for RTAs. A few Participants noted that differentiated benchmarks should not be too low so as to make them meaningless. Reacting to these comments, the proponent noted that the proposal for different benchmarks did not amount to a two-tier system; rather, he highlighted that it simply reflected the developmental aspects of RTAs, which were an integral part of the Doha mandate.

19. The proponent was asked to explain how the overall position regarding S&D treatment described in paragraphs 4 and 5 of the proposal would be translated in practice in the negotiations. Additional information was requested regarding "sensitive sector", in particular on how to define it, and on the meaning of "endurance costs". As to the "adjustment costs", one Participant agreed that these might differ, in particular when RTA parties were at different stages of economic development; he remarked, however, that the costs should be handled through mechanisms such as phasing in commitments over an appropriate period of time rather than through exclusion from liberalization,

since the latter would not lead to reform and hence the economic benefits that could be accrued would not be realised. Clarifications were also requested *vis-à-vis* the proposed less-than-full-reciprocity, in particular the scope and type of substantive RTA disciplines it would encompass; whether it would apply only to North-South RTAs or also to South-South RTAs; and whether that would not imply that, in the negotiation of North-South RTAs, developing countries would be inclined to offer significantly less market access concessions that their developed counterparts. The proponent replied that less-than-full-reciprocity applied with respect to different benchmarks, transition periods and review systems, and to both North-South and South-South RTAs.

20. The proponent was asked whether his delegation had in mind any set values for the benchmarks and whether these were to be of equal weight and were to sit side by side. One Participant wondered whether the margin of 10 per cent proposed at the last meeting for differentiating between developed and developing RTA parties *vis-à-vis* SAT was still valid. The proponent reaffirmed the 10 per cent margin proposal, while noting that precise figures should be further discussed on the basis of the study suggested in paragraph 10 of the submission. Some Participants welcomed the proponent's support for a SAT definition encompassing both trade flows and tariff lines, while remarking that thereof the two sets of figures could be combined remained unclear. The proponent confirmed his delegation's support for a SAT definition based on both trade flows and tariff lines, possibly supplemented by qualitative benchmarks. One Participant observed that the proposal would entail the coexistence of three sets of SAT rules, namely those applying to RTAs fully under Article XXIV of the GATT 1994, those applying to RTAs less than fully under Article XXIV, and those for Enabling Clause RTAs. In reply to his request to clarify when the second and third rules would apply, the proponent said that his delegation was of the view that at that time consensus could be reached on the two following principles: that developed country Members should be subject to stricter benchmarks, and that a margin should exist to reflect S&D treatment for developing country Members since a "one-fits-all" approach was not appropriate.

21. Some Participants expressed support for the idea of the Secretariat making an analysis of trade volume and tariff line coverage in all notified RTAs, but a few cautioned that this might not be easy because of the difficulty of identifying the number of tariff lines covered in RTAs. One Participant said that the Secretariat should merely collect the data and the analysis be done by Members; he noted that it would be difficult for the Secretariat to analyse the reasons for RTA-specific coverage, given the secret nature of RTA negotiations. The point was also made that the objectives of the Doha negotiations should not be to simply codify existing practice or take the lowest common denominator, but rather to strengthen and clarify RTA disciplines. In addition, recalling a similar study previously made by the Secretariat, some Participants viewed an extension of that study to RTAs notified under the Enabling Clause as an interesting plus. A representative of the Secretariat clarified that the study referred to had been distributed on 5 April 2002 as WT/REG/W/46 (*Coverage, Liberalization Process and Transitional Provisions in RTAs*); it had been one of the horizontal studies prepared by the Secretariat in the context of the work on systemic issues carried out in the Committee on Regional Trade Agreements. Noting that due to, in particular, the lack of data, that study had only partially encompassed all RTAs in force by that time, she said that data availability might have improved since then and around 50 new RTAs had been notified to the WTO. Reacting to the comments made, the proponent reaffirmed that it would be useful to have that earlier study updated given the number of new agreements; he acknowledged that while it might be difficult to collect relevant data, that was not an impossible task for the Secretariat.

22. Various Participants supported the view that ten years was an ideal phase-in period, expressing readiness to negotiate appropriate S&D treatment for developing country Members. One Participant reaffirmed its view that SAT should be achieved by the ten year period of time; a longer transition period should only apply either to the percentage not covered by the SAT definition, or to developing country Members (depending on the new disciplines that would be agreed upon). A few Participants reaffirmed that longer phase-in periods might be necessary to achieve as comprehensive a tariff line coverage as possible. Additional information was requested on how the

proponent would define "exceptional circumstances", in particular *vis-à-vis* its relationship to the case-by-case analysis provided for in paragraph 3 of the *Understanding on the Interpretation of Article XXIV of the GATT 1994*, and whether the definition should be based on a list of criteria which had to be met in full or in part. One Participant expressed his delegation's concern with the proposal that the Group work on defining parameters for such "exceptional circumstances", since that only benefited RTA parties. Divergent views were expressed *vis-à-vis* the proposal to restrict the right to invoke "exceptional circumstances" to developing countries only.

23. Some Participants supported the proponent's proposal regarding "retroactivity". One Participant noted her delegation's legal interpretation that any new provision applied to all RTAs in force by the date of enforcement of the provision. The point was however made by a few Participants that these discussions should be left for later, once the new rules had been defined. Some Participants expressed concern with the proposal; they noted in particular that a number of RTAs already in force might have to be renegotiated and that this might be a heavy burden for certain countries.

24. The proponent said that further replies to questions and comments made would be provided at the Group's next meeting.

25. One Participant, speaking on behalf of the Asia-Pacific-Caribbean (ACP) Group of countries that had sponsored the proposal contained in TN/RL/W/155, noted that their countries were heartened by the renewed interest and debate on the substantive area of RTA negotiations concerning Article XXIV of GATT 1994. The importance of reaching agreement on the clarification and improvement of this Article, while also taking into account the developmental aspects of RTAs, which truly reflected the intentions of all their Ministers at Doha, was paramount. Article XXIV as it stood did not accurately reflect or take into meaningful consideration the realities of the international economy as related to RTAs between developed and developing countries, with arrangements which in many respects had not even been factored in during the initial development of the GATT. These arrangements were a characteristic of the new global economy; they had promoted and could continue to promote liberalization of a progressive nature for developing countries. It was important that the debate took into account the position of the ACP Group. That Group of 79 countries, while recognizing the benefits of trade liberalization and economic openness, was also aware of the need to ensure that liberalization took into account the specificities and constraints which the majority of developing countries faced. There were critics who stated that RTAs impeded the global trade and economic order, that is the stumbling block debate, but for the economies of the ACP Group of countries - which touched on three distinct regions and included LDCs; small, vulnerable economies; land-locked economies; net-food importing economies; and preference dependent economies - RTAs could assist in the attainment of their development objectives while also creating new economic opportunities at a managed pace commensurate with their capabilities. Article XXIV as it stood at present had been interpreted in a myriad of ways. From the beginning of these negotiations, the ACP had taken the position, as epitomized in TN/RL/W/155, that there was an urgent need to have certainty in the way the provisions were interpreted, and that this certainty had to be balanced with the need for flexibilities for developing countries. This could further massage these countries` integration in the global economy, which was the aim of these negotiations, while also ensuring that their economies were not made worse off by this integration and liberalization process. The importance and virtues of real and meaningful S&D treatment and flexibilities in the agreements were well known and accepted, and Article XXIV provided a perfect opportunity for this theoretical recognition to be practically implemented and incorporated in the discussions. Members would recall that at the Meeting of the African Union Conference of Trade Ministers, held on 7 June 2005, specific mention had been made to the issue of asymmetry and flexibilities related to Article XXIV and to the need for the agreement to be "appropriately amended to allow for necessary S&D, less than full reciprocity principles and explicit flexibilities that were consistent with symmetry, to make RTAs involving developing countries pro-development". This position underpinned the central thesis of the ACP submission of April 2004 as well as the fundamental aim of the Group in these negotiations.

26. He then continued by saying that the recommendations contained in the ACP submission remained relevant, and enumerated the concerns of the ACP Group, stressing that it was essential that the deliberations on Article XXIV of the GATT 1994 took those into consideration. First, there was a need for reaching agreement for greater flexibility for developing countries in terms of transitional periods and the degree of liberalization. Second, recalling that the key objective of the submission was to bring S&D treatment into Article XXIV and ensuring that it be incorporated and applied to RTAs formed between developed and developing countries, he said that the core pillar of the submission was the introduction of S&D into the SAT requirement in respect of duties; it specifically recommended that appropriate flexibility be provided to developing countries in meeting the SAT requirement in respect of trade and product coverage, through the application of a favourable methodology and/or lower and/or differentiated threshold levels. Third, there was a need to incorporate real S&D treatment and notions of asymmetry (in whatever form or approach) when determining product coverage, being it the hybrid approach encompassing both number of tariff lines and the combined value of trade, the use of qualitative benchmarks, or tariff lines alone. Fourth, the proposal to introduce new standards as regards "highly traded products", as well as conversely "products that Members currently do not, but could trade, if it were not for protectionist measures"' set out an extremely ambitious agenda, especially when this was examined in line with some of the very high figures suggested as benchmarks for the elimination of tariff lines. Fifth, the significance of rules of origin had also to be recognized, as complex rules of origin could greatly diminish the substantive benefits to be derived from RTAs for developing countries, specifically those in the ACP Group. Sixth, with regards to "other restrictive regulations of commerce", the ACP countries continued to support the need to formalize the S&D elements, to ensure the application of a flexible interpretation that allowed them to apply contingency protection measures (including safeguards) on intra-regional trade. Seventh, in line with what had already been stated in the ACP's submission; it was their belief that a transition period longer than the existing ten years should be mandatory for developing countries. Eighth, there was a need to preserve both the intention and the integrity of the Enabling Clause in these negotiations. The continued discussions, and anticipated agreement, on the changes that needed to be made to Article XXIV to make it more responsive to the realities of North-South RTAs were of integral importance to ACP countries, from both a systemic point of view and in terms of ensuring that North-South RTAs truly attained the development goals which they intended to. Participants had an obligation to ensure that real, meaningful and workable S&D provisions were negotiated into such agreement and that the mandate given by Ministers was fulfilled.

27. One Participant remarked that the statement made on behalf of the ACP Group appeared to be a summary of earlier submissions proposing to modify Article XXIV of the GATT 1994. She noted that her country, as well as all developing countries, wished to receive, at the end of the negotiations, the developmental benefits that would be agreed upon at the Doha Development Round. Notwithstanding, she recalled that the preferences granted under all the agreements linking the ACP countries and the European Communities since 1957 (the Treaty of Rome, the Yaoundé, and Lomé I-IV Conventions, and the Cotonou Agreement) would expire on 31 December 2007 and would be replaced by RTAs between the European Communities and the ACP countries. An analysis of the Cotonou Agreement and its predecessors showed that the objective being pursued by these countries was to include in the WTO the rules contained in the aforementioned agreements, in the form of modifications to be made to Article XXIV of the GATT 1994. Observing that Article XXIV standards were not the best ones but were already low, she considered that the S&D treatment being sought by the ACP Group, though it might be legitimate, warranted close scrutiny by Members; she remarked that other developing countries produced the same products as the ACP countries and also wanted to export those products to the European Communities. While understanding the particular situation faced by these countries, as well as the importance of S&D treatment and of providing opportunities to all Members, she underlined that S&D provisions should apply to all developing countries. Her delegation could not support the proposed modifications to Article XXIV. She explained that her delegation's position in that respect was based on a national study, which would be presented to the relevant Negotiating Groups as a working document.

28. Responding to these comments, one of the sponsors of the proposal contained in TN/RL/W/155 took a broader view on systemic issues. He clarified that his Group's position was that Article XXIV of the GATT 1994 had to be further refined and defined, and that S&D treatment needed to be integrated into the new rules, irrespective of the kind of RTAs the countries in the Group were parties to. Another Participant referred to a number of RTAs in force that included S&D provisions in the form of asymmetries; in that context, he did not understand why reference had been made earlier to a particular agreement. He noted that providing for a de facto flexibility was a practice in the negotiation of RTAs, either *vis-à-vis* coverage, transition periods, or both. It was his understanding that the proposal in TN/RL/W/155 aimed at providing for a recognition of the use of that de facto flexibility, and that negotiations should clarify to what extent this could be incorporated in the new rules and be properly reflected in Members' practices, while going beyond the lowest common denominator.

29. The Chairman invited Participants to indicate whether their delegations were in the process of elaborating specific proposals on any systemic issue, and when they foresaw that these would be made available to the Group. That, he noted, would help the Group to have a clearer idea of the work ahead and to better programme it. No Participant took the floor.

30. The Group held an informal debate on the basis of an informal checklist by the Chairman, entitled *Notes on "Subsequent notification and reporting"*. At the end of the informal discussions, the Group reverted back to formal mode.

C. OTHER BUSINESS

31. The Chairman shared his views on how to advance RTA discussions for the remainder of the year. As he had indicated in his recent report to the Trade Negotiations Committee (TNC), it was his intention to start a relatively intensive informal process after the summer break. With respect to "RTAs' Transparency", he would distribute in the near future a revised version of document JOB(05)/63, incorporating the results of informal discussions held in the previous and that day's meetings. It was his hope that this draft would serve as an appropriate basis for refining various points and progress towards the drafting of a negotiated text. On systemic issues, the Group had not yet been able to precisely define the universe of issues to be further explored, despite the fact that a number of proposals were on the table and some others announced. It was his opinion that the Group could arrive in Hong Kong with a clear idea on the scope and the main parameters of the negotiations on these issues. For that, it was important that within the next months the Group identify, on an ongoing basis, those systemic issues requiring greater technical discussions, to be progressively incorporated into the informal process. From the discussions held that day, for example, the debate concerning various SAT-related criteria had already provided an indication of those issues that might require such an analysis.

32. He then urged Participants wishing to elaborate concrete proposals on systemic issues to present them to the Group as soon as possible, in order to facilitate the work. He recalled that only two formal meetings were foreseen up to December, the last one being scheduled for 1 November, though, he remarked, the possibility always existed for scheduling another meeting after that date, if necessary. In sum, he proposed that by September the Group engage into an informal process on the basis of what he had just indicated, in parallel to the Group's formal meetings, and noted that a specific proposal on that would be distributed soon after that meeting by fax.

33. One Participant thanked the Chairman for the report made to the TNC, which represented a very fair assessment of the Group's work. He welcomed the distribution of a new transparency text. With respect to systemic issues, he concurred that time had come for a more informal work and requested further clarification on how this more detailed analysis would be organized. His delegation would be happy to provide further inputs into its original proposal circulated in TN/RL/W/179; that would however require a different format for discussions in the one being used at present. Additional

inputs (e.g., on quantitative benchmarks for SAT) could be provided so that fruitful, more technical discussions take place.

34. The Chairman noted the very little time ahead before the Ministerial in December. It was clear that Participants wanted to continue consultations on the proposals circulated as TN/RL/W/173/Rev.1, TN/RL/W/179 and TN/RL/W/180. He highlighted the need that the informal process starting immediately after the summer break be of a real interactive nature, so as to favour a more in-depth exchange of views on specific systemic issues and help building a consensus regarding the universe of issues for Hong Kong. He further indicated that he was open to having bilateral consultations with any Participant that so wished.