

**Negotiating Group on Rules**

**SUMMARY REPORT OF THE MEETING  
HELD ON 1 NOVEMBER 2005**

Note by the Secretariat

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

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

A.	ADOPTION OF THE AGENDA .....	1
B.	REGIONAL TRADE AGREEMENTS .....	1
C.	OTHER BUSINESS.....	4

B. REGIONAL TRADE AGREEMENTS

3. The Chairman proposed that the Group appraise the submission made by Japan, circulated under TN/RL/W/190. The proponent announced his intention to help Participants in improving their understanding of the document, submitted some days previously, and said that its purpose was to advance the discussion on the WTO rules applying to Regional Trade Agreements (RTAs) and to present the opinion of his delegation on "substantially all the trade" (SAT). He announced that his country strongly preferred trade-based benchmarks accompanied by some supplementary measures. In consequence, this paper attempted to find ways to overcome some of the disadvantages of the trade-based test, such as the fluctuation of trade flows or the lack of an incentive for tariff elimination in products with no trade, which should not outweigh the benefits of the trade-based test. At the same time, one disadvantage of the tariff-line test was the lack of incentive to eliminate duties in products with a large trade volume, which made him doubtful about adopting this mechanism. The paper compared both trade-based and tariff-line tests and highlighted that while the former encouraged countries to liberalize products with a large trade volume, the latter allowed for the exclusion of highly traded products. Most likely, tariff elimination in highly traded products would bring about more trade creation than in products with no trade, because in most cases supply and demand conditions did not change by mere tariff liberalization. He did not consider the tariff-line tests proposed by other Participants to be ambitious enough because they allowed for the exclusion of highly-traded goods, whereas his delegation's proposal had larger potential for trade expansion. One Participant asked whether this trade expansion would be trade creating or trade diverting. The proponent clarified that by trade creation he meant trade expansion and that his delegation had still not looked at the trade creating or diverting effects of those measures.

4. The proponent said that the paper attempted to solve the disadvantages outlined by Participants with respect to the trade-based test. This exercise would be useful not only if delegations decided to use the trade-based test as the primary mechanism but also if it was chosen as the secondary mechanism. His delegation considered that each test had its advantages and disadvantages and he wondered whether the mere combination of both would actually provide the Group with an appropriate and effective benchmark towards the goal of liberalization. He encouraged Participants to

make further contributions in this respect. One Participant agreed that each method had advantages and disadvantages and that a simple tariff-line test would not reflect accurately actual trade although it might give a better indication of potential trade. One Participant asked the proponent why, on the one hand he had suggested that the benchmarks should be as simple as possible, and on the other he had suggested some supplementary tests rather than combining both the trade-based and the tariff-line tests. The proponent replied that the mere combination of both tests was not enough because the tariff-line test was neutral between traded and non-traded products, and in his delegation's view, Members should focus on non-traded products. There was a significant difference in trade promotion effects between those products which previously were subject to a high tariff and products for which the tariff rate was zero. Trade creation effects would be higher in products which had no trade due to high tariffs. In addition, he considered that it was important to evaluate parties' efforts and the tariff-line test counted the tariffs that were liberalized as well as the tariffs that were already bound at zero in the WTO. One Participant who had already showed in previous meetings her preference for the tariff-line test as long as the agreed figure for liberalization was high enough, say 95 percent, expressed her openness to discuss other types of tests. She concurred with the proponent that a tariff-line test could be a disincentive to Members to liberalize highly traded products. Another Participant agreed that the test should be defined in such a way as to prevent the exclusion of any highly traded product and expressed his support for the trade-based test because it might not be always possible to achieve ambitious coverage in terms of tariff lines. In order to measure SAT, the benchmarks should not include trans-shipped or re-exported goods but just originating goods. One Participant remained convinced that the benchmark should look not only at actual trade but also at future trade, as would be the case with a tariff-line based mechanism. One Participant reiterated his position that any inclusion of a quantitative threshold in the SAT benchmark should build upon current GATT disciplines. One Participant requested the proponent to explain why he put more weight on the trade-based test than on the tariff-line test. He saw a similarity between the trade-based test and the European Communities' proposal for counting tariff lines in that both tests tried to give a fair weight to each tariff line. The proponent answered that for the time being his delegation preferred the trade-based test but it was open to analyzing other supplementary measures for a tariff-line test. However, looking at the proposals that had been presented, his delegation would probably find it difficult to agree to simply combine both approaches. One Participant agreed that a trade-based test was a good way of measuring SAT and asked the proponent whether he would measure exports and imports or just imports.

5. The proponent was of the view that the main difficulty of the trade-based test was that under it, trade fluctuation could make the coverage figures too volatile to accurately assess RTAs. This could be eased by using the same data for analyzing RTAs as the parties had used in their negotiations and, by doing so, the coverage rate could be independent from trade fluctuations. A second difficulty of the trade-based test was that the coverage rate might be mismatched with future trade patterns; this could be solved by periodically reviewing coverage rates and reassessing the situation over time, because even if the 50 highest traded products were assessed at the entry into force, these 50 products could change and Members would have to check them again. One Participant agreed with looking at the trade data used in the negotiations but considered that a periodic review could lead to some uncertainty because if trade declined, an agreement which had met the SAT requirement initially might no longer qualify. The proponent answered that if trade declined, the new figure could be an incentive for Members to improve the situation and be consistent with WTO rules. Another Participant considered that SAT should be assessed only at the entry into force of the RTA and another Participant deemed periodic reviewing to be too complicated. One Participant asked the proponent what would be the time frame for reviews and what would happen in the case that an agreement that had fulfilled the SAT requirement failed to fulfil it in a subsequent review. The proponent answered that he had no clear idea on this respect. One revision should probably take place at the end of the transition period; subsequent reviews would probably depend on Members' concerns or on trade fluctuations. Another Participant asked the proponent to compare his method for review and the "snapshot" suggested by Australia in TN/RL/W/180. The proponent said that periodic

reviewing was one of the many possible solutions to the "snapshot", but it was something upon which the Group would still have to work.

6. According to the proponent, a third difficulty of the trade-based test was the potential underestimation of duty elimination in products with no trade. This could be tackled by calculating the ratio of products with no trade whose previously maintained WTO bound rates were eliminated within in the RTA to the total number of products with no trade. This calculation would evaluate the parties' effort to eliminate duties, especially in products with no trade because the higher the ratio, the more effort the RTA parties would have made to eliminate duties in products with no trade. However, he agreed that this calculation did not deal with all the factors hampering trade, such as supply and demand conditions. One Participant asked what treatment would be given to unbound rates because some applied MFN tariffs were quite high. The proponent explained that, in order to acknowledge tariffs bound at zero in RTAs, such tariffs would be used in the numerator. Another Participant deemed this method insufficient since the idea should not be to measure the liberalization of non-traded products, but rather of those that were traded internationally but not bilaterally, so as to ensure that new opportunities were opened at a multilateral level. The proponent replied that although multilateral liberalization was important, in the RTA context the focus should be on bilateral liberalization. Two Participants asked the proponent why he put so much emphasis on non-traded products when equally harmful distortions occurred in already traded products. Another Participant expressed doubts about calculating figures based on non-traded products because some products might stop being traded due to high barriers and would not appear in the formula used by the proponent, which in turn would give an artificially high percentage. One Participant considered that this formula had the same problems that had been identified in the tariff-line approach because it could be exaggerated by including products with no trade. The proponent answered that products with trade would be already covered by the trade-based test, which did not cover products that were not traded. His delegation considered that this approach would be beneficial in so far as Members considered that there was a need to identify products with a high potential of expansion. Since it would be difficult to identify such products, there was a need to encourage parties to eliminate as many duties as possible, which was a similar approach as the tariff-line test. One Participant asked the proponent if he had reflected on a parallel method to identify those products that would be traded in the absence of high tariffs. One Participant deemed these supplemental tests to be necessary to complement the trade-based test, but a simple tariff-line test would be more appropriate than the supplemental tests proposed.

7. The proponent said that the paper touched upon six different issues that his delegation considered relevant for a qualitative assessment. Of those six issues, tariff-rate quotas (TRQs) offered a potential for liberalization because in the case that in-quota rates were zero and quotas were sufficiently large, they could have the same impact on trade expansion as duty elimination. Although they would not result in complete liberalization, they could still contribute to multilateral liberalization. Two Participants disagreed that TRQs could have the same effect as duty elimination because normally TRQs reflected domestic consumption and production, which together with the issue of the management of the out-of-quota rate, made it unlikely that they would have the same effect as tariff elimination. The proponent acknowledged that there were many issues to be considered when assessing the effects of TRQs but if the situation was as he had previously described and the management of the TRQs remained simple, the effects would be close to complete tariff elimination.

8. One Participant agreed with using qualitative benchmarks, and welcomed the proposal on TRQs because, by giving a TRQ that was equal to the production capacity of partners, adequate market opening could be ensured. He also supported point 4 which dealt with the impact of RTAs on development since Special and Differential (S&D) treatment was an aspect to be considered in RTA negotiations. One Participant expressed her openness to consider these issues but highlighted that development should be considered in a broader context. She suggested that point 5, on the impact of trade defence measures, should be looked at before the analysis of other trade restrictions. One

Participant asked the proponent whether this point was linked to the submission by Norway (JOB(05)/268) or if it was independent of that. The proponent clarified that his view was somewhat different from that expressed in JOB(05)/268 and he clarified that his aim was to ensure the proper use of safeguard and anti-dumping measures, so that their effect on trade expansion was minimized. Another Participant disagreed with the benefits of a combined quantitative and qualitative approach and asked whether there was a sequential or parallel relationship between both kinds of approaches. The proponent said that one option would be to incorporate the results of the qualitative evaluation so as to correct the results of the coverage rate, but he was open to discussing further options. In response to a question about why he had singled out the abuse of measures like anti-dumping and not others, the proponent answered that it was the proper use of the measure that needed to be emphasized. One Participant agreed with the need to complement a quantitative assessment with a qualitative test because of the requirement found in GATT Article XXIV:8 to eliminate other restrictive regulations of commerce. One Participant supported the proponent in raising these issues and considered that they needed further discussion. Several Participants pointed out that any rule agreed upon should remain as simple as possible because it would ease the work of RTA negotiators and a combination of both quantitative and qualitative benchmarks could result in a too complicated rule.

9. In response to a question concerning on what grounds the proponent considered that duties eliminated beyond the transition period could be counted towards SAT, the proponent replied that future trade expansion was as important as duty elimination at entry into force. Two Participants, who agreed that major sectors should not be excluded, noted that as the proponent of JOB(05)/268 had mentioned, it was difficult to define "major sector", and asked the proponent if he had any suggestions on how to define it. The proponent clarified that he had no suggestions for the time being. One Participant asked the proponent what the meaning of "total exclusion" was, i.e. whether he would consider the liberalization of a single tariff line as enough for the entire sector to qualify.

10. One Participant pointed out that another disincentive for liberalizing products under the tariff-line test was the need to liberalize those tariff lines corresponding to goods which were produced outside the RTA partner country, as happened in agricultural products. He further explained that there were sectors, particularly agriculture, in which some RTA partners (not only developing countries) might not produce certain products because of weather conditions or geography. In this case, not extending tariff elimination to those products would be of no practical advantage but would give comfort to the domestic sector that these areas were not open to any threat of trade deflection. This could also apply for non-agricultural products, particularly those that required some large scale production, because in his analysis he found that countries lacked either the production capacity or the land, for example in the case of integrated refineries and such like.

#### C. OTHER BUSINESS

11. The Chairman informed the Group that the next informal meeting would take place on 10-11 November 2005. Given that some delegations had pointed out their constraints in terms of time and human resources, he had already cancelled one meeting and considered it important to make the most of the upcoming meetings. He shared with the Group the main tasks that were to be carried out before the Hong Kong Ministerial Conference. One was the Chairman's Report to the Trade Negotiations Committee (TNC) which might have some special features given the Hong Kong Ministerial, but would have the usual structure. In addition, the Group had to make its contribution to the Ministerial Declaration. For this purpose, the Chairpersons of the different groups and the Director General had agreed that each Chairperson would come up with ideas and elements about the work and progress in each group that would be included in the Ministerial Declaration. In this respect, the Group would receive a preliminary first draft before 10 November 2005 so that at the meeting on 10-11 November 2005, it could hold the first discussions on the text. He invited Participants to submit any preliminary ideas on the Ministerial Declaration before 7 November 2005.

12. As for the remainder of the meeting, in informal mode, the Chairman suggested devoting the discussion to the informal Roadmap submitted by him on 27 September 2005 so that the afternoon could be dedicated to bilateral discussions. Two Participants pointed out that the Group had held few discussions on some aspects of the Roadmap, namely point C, and if they were only going to discuss it for what was left that morning, they would have problems moving to text-based negotiations immediately after Hong Kong. The Chairman acknowledged this and suggested dedicating the entire meeting on 10 November 2005 to the Roadmap and 11 November 2005 to the draft Ministerial Declaration, as well as allocating some time to discuss issues of transparency between the two days. One Participant stressed that one or two discussions on the Roadmap would not be enough to move to text-based negotiations. One Participant emphasized the need to move forward on the transparency element of the negotiations. Two Participants asked to be given enough time before 11 November 2005 to consider any proposal that could emerge for the Ministerial Declaration, and agreed with the Chairman's proposed timetable. One Participant recognized the work undertaken by the Chairman and considered his document TN/RL/13, as the best document that any Chairman had come up with at the General Council. He asked the Chairman to provide the draft Ministerial Declaration first in Spanish, so his delegation could have more time to analyze it. At the informal meetings he had attended, most documents were produced just in English, which made him feel uncomfortable, considering that Spanish was also an official WTO language. The Chairman replied that most documents were distributed in English because that was the language in which they were received and they were distributed as soon as possible. Translation took time, although he kept very much in mind this comment. One Participant asked the Chairman to give further insight into the direction that the draft Ministerial Declaration would take, in particular with respect to JOB(05)/171 and the informal Roadmap on SAT issues. The Chairman said he had no clear idea at that moment on whether these documents could be built into the Declaration, which in any case should be succinct and not extremely lengthy. He considered that the Declaration should be constructed using a bottom-up approach and invited the Participants to make suggestions in that regard.

---