

Negotiating Group on Rules

**SUMMARY REPORT OF THE MEETING
HELD ON 30 JANUARY 2006**

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 30 January 2006.

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda, as contained in WTO/AIR/2737:

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B. REGIONAL TRADE AGREEMENTS

3. The Chairman called the Group's attention to the submission by Japan, TN/RL/W/190, which had only been preliminarily considered at the meeting of 1 November 2005. He invited Participants to supplement their comments on that submission.

4. The proponent of TN/RL/W/190 welcomed the opportunity to give a more focused explanation on some of the issues raised. The main objective of the submission was to show that a trade-based test was preferable to a tariff-line based test as a benchmark for coverage, in terms of its effect on trade promotion. A trade-based test would encourage the parties to a regional trade agreement (RTA) to eliminate duties more in products with large trade than in non-traded products so as to meet the coverage benchmark. Freeing duties on products with a large trade volume would reduce import prices and result in increased trade, while for non-traded products the effect upon trade promotion would be uncertain because market conditions (such as lack of supply or demand) would not change by merely eliminating duties. The proponent also stated that several other Participants shared the view that a trade-based test would be the best approach for determining a quantitative benchmark of coverage. As to the concrete method for calculating the trade-based coverage figure, he expressed the view that it should take into account import and export flows together, to accurately reflect the correlation between the parties' concessions in the overall balance of the RTA package.

5. The proponent then reviewed the concerns raised by Participants on some of the suggested approaches to address the shortcomings of a trade-based test. Firstly, on the doubts expressed with respect to a periodic review of coverage to monitor subsequent changes in trade flows, he affirmed that it would help to the fair evaluation of RTAs to take into account the actual state of trade or changes in trade patterns even when using a tariff-line based test. Secondly, on the proposed ratio between the number of products on which duty was eliminated in the RTA concessions and the total number of non-traded products, he clarified that the general aim was to put more weight on the

products with a large trade volume than on products with no trade volume. The suggested measure would make allowance for the fact that a trade-based test, while making it superfluous to evaluate duty elimination in non-traded products, would not reflect any duty elimination which might have taken place in those products. This supplementary measure could thus respond to the argument that a trade-based test gave no incentive to eliminate duties in non-traded products.

6. Participants thanked the proponent for his submission and efforts to spell out the advantages and drawbacks of both the trade-based and the tariff-line tests. They recognized the proponent's contribution to the debate on the meaning of the "substantially all the trade" concept.

7. Some Participants supported the proponent's view that the trade-based test should be the primary methodology for the coverage benchmark, although some highlighted the convenience of having a tariff-line test as an additional measure; the issue of taking into account the other restrictive regulations of commerce was also raised in that context. One Participant said that the submission brought out the importance of the trade-based test, as well as the downsides of the tariff-line test. He stressed that the latter might be an important and valid way of looking at coverage, but still raised problems which would in his view not be taken care of by combining the two tests. He stressed that the trade-based test was crucial and should not be overlooked.

8. Some Participants stressed that it was too early to discard or favour any type of test and that further consideration of both the trade-based and the tariff-line tests were necessary. Other Participants stated that they could not consider the tariff-line test as a mere "additional" test. In their view, while actual trade was better covered in a trade-based test, potential trade was better covered in a tariff-line test. One Participant said that coverage was to be seen as a matter of factual circumstances in each case. It seemed clear that, for example, in the case of a market on which there had been restrictions for a very long time, it would not be appropriate to simply look at trade coverage because these restrictions would not be taken into account. She did not favour weighing any particular test, rather supported both the trade based and tariff-line tests recognizing that each had strengths and weaknesses. In her view, the aim was not to look for a single, best possible benchmark, as described by the proponent, but to expand the ways to look at trade coverage (not to limit them).

9. Several Participants referred to the suggested periodic review mechanism (Part IV.1 of the submission), as a supplementary measure, stating their preference for a single determination of compliance, right from the start, with the "substantially all the trade" condition rather than a continuing and probably indefinite examination. It was observed that a periodic review to assess fluctuations in trade coverage would be overly complex, and a burdensome process, adding to the already heavy workload of the WTO body in charge of examining notified RTAs. Concerns were also expressed about the consequences of such a review of changing trade patterns: Would it be reasonable to envisage that the parties could be compelled to renegotiate an RTA that had been negotiated in the past?

10. On Part IV.3, one Participant expressed doubts that the calculation of the proposed ratio would assist in assuring future trade creation; he considered more appropriate another proposal on the table which addressed the issue more directly, through a potentially-traded products test. With respect to the noted shortcomings of the tariff-line coverage, it was recalled that a product could not be traded either because of high tariffs or because of an actual lack of market/supply; the latter case should be taken care of through a fine-tuning of the tariff-line test, rather than by abandoning it. One participant asked how would the proposal consider the exclusion of highly traded value products, recalling that this concept did not refer to a measurement of products without trade, but to products without bilateral trade which were important in the parties' total exports.

11. On Part V.1 of the submission, referring to tariff elimination with a longer transition period, one Participant disagreed that the tariffs eliminated after the transition period should be taken into

account; at the end of the day, this would encourage RTA backloading and undermine trade liberalization. Another Participant said that the assessment of tariff elimination was to be done in terms of a maximum ten-year transitional period. With respect to the paragraph on tariff-rate quotas (TRQs) in Part V.2, one Participant said that TRQs had trade restrictive effects and should not be treated any differently from tariffs; the "substantially all the trade" test should involve full liberalization. That same Participant went on commenting on Part V.3 of the submission, stating that the proposal to distinguish trade expansion based on pre-RTA tariff rules seemed overly complex. On Part V.5, he asked the proponent to clarify whether the aim was to eliminate safeguards and anti-dumping measures from the calculation of coverage.

12. One Participant stressed the importance that the Group take into account RTAs' developmental aspects and consider introducing special treatment for developing countries in the context of the disciplines currently discussed, for example making allowance for the effects of an RTA on international trade on the basis of the parties' share in that trade. Some Participants expressed acknowledgement of the issue raised.

13. The proponent of TN/RL/W/190 thanked delegations for their comments and went on giving further explanations on the different aspects of the proposal. First, he expressed openness as to flexibilities which could be considered for developing countries. Second, he emphasized that even if some combination of the tariff-line and trade based tests was considered, it was important to make a more detailed analysis about the benefits and shortcomings of each test. Third, noting that Australia's proposal on highly traded products aimed at tackling the question of actual trade flows, as did the suggested periodic reviewing for subsequent trade changes, he said that the problem remained on how to do it; also, though he agreed that a periodic review might be a burdensome procedure, he wondered whether a snapshot approach would be meaningful in ensuring the continuous consistency of an RTA. Forth, he reiterated that the proposed measure about the liberalization in non-traded products was nothing more than a "supplementary" measure, the priority lying not in those products but in products with a large trade volume; he added that the tariff-line test, though probably touching upon non-traded products, might not allow an appropriate analysis of how much trade liberalization was made in those products, given that the parties could freely select the items for duty elimination. Still on that same question, he agreed that the crux of the matter was to distinguish, among non-traded products, those with good trade potential through tariff elimination from the rest, and expressed the view that the proposed ratio served that purpose; on the comparison of RTA concessions with parties' total exports, suggested during the discussion, though he understood the point made that a link might exist between RTA liberalization and multilateral liberalization, he wondered whether these should not be separated in the context of the present negotiations.

14. The fifth aspect commented by the proponent of TN/RL/W/190 concerned the assessment of duty elimination during a transition period longer than ten years. In this respect, he stressed that this had been included in the submission as a qualitative benchmark and that the aim was not to defend the value of longer transition periods, but to signal that trade liberalization effects might be meaningful even if duty elimination was implemented over a longer transition period. Sixth, while agreeing that TRQs could restrict trade, depending on the way they were operated, he noted that a TRQ system could also have the same effect as tariff elimination (for example, when in-quota rate were zero and in-quota amounts were sufficiently large); so, there was a need for a subsequent detailed monitoring of TRQs. Finally, replying to a question on safeguard and anti-dumping issues, he clarified that the idea spelled out in the proposal was that a proper use of these measures in the RTA should be ensured.

15. The Chairman thanked the proponent for the submission of his paper and explanations, and Participants for presenting comments to it.

C. OTHER BUSINESS

16. The Chairman informed the Group that the next formal meeting devoted to RTAs would take place on 23 February 2006.
