

Negotiating Group on Rules

**SUMMARY REPORT OF THE MEETING
HELD ON 29 JUNE 2004**

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 29 June 2004.
 - A. ADOPTION OF THE AGENDA
2. The Group adopted the following agenda:
 - A. Adoption of the Agenda
 - B. Regional Trade Agreements (RTAs)
 - C. Other Business
- B. REGIONAL TRADE AGREEMENTS
3. The Chairman indicated that the main issue for the formal meeting was the consideration of the joint submission presented by the ACP Group of participants and distributed as document TN/RL/W/155, which had already been addressed in a preliminary manner at the Group's previous meeting (TN/RL/M/15).
4. In introducing this joint submission, one sponsor, speaking on behalf of all the proponents, thanked the delegations that had supported, commented, and/or raised questions regarding the joint submission, and those that subsequently forwarded their preliminary questions in writing. These preliminary questions, as well as others raised during the May meeting, were currently being examined by the sponsors and had indeed been useful. The proponents had decided to refine the paper and would submit a revision at a later date. That revision would take into consideration the breadth, depth and scope of the issues; the concerns raised by delegations; the critical importance of the development aspects of RTAs; and Special and Differential (S&D) Treatment in the WTO rules in general, as well as in GATT 1994 Article XXIV and the Enabling Clause in particular. The sponsors' intent was not only to address some of the preliminary concerns highlighted by delegations but also to ensure the necessary clarity and focus in their proposals. In this regard, the discussions and substantive questions at this meeting raised would prove to be instructive. He called on Members to be cognisant of the fact that arriving at a consensus document agreeable to all sponsors could be a delicate and time consuming exercise. However, where possible, the proponents would attempt to address some of the preliminary questions at this meeting. In streamlining the proposal, it was hoped that both the political message and substantive content would be better crystallized, thereby assisting in moving the process forward in a meaningful way while at the same instance taking into account the development dimension of RTAs. He reiterated that from the proponents' perspective, RTAs represent a fundamental instrument of development and economic integration which required a multilateral framework supportive and complementary to their formation and functioning. With

respect to the Enabling Clause, it should be made clear that the proponents supported its preservation, since it provided the requisite legal cover for RTAs between developing countries. Of equal importance was to explore options for the provision of additional S&D treatment and flexibility for developing countries, cutting across paragraphs 5 to 8 of Article XXIV of GATT 1994. The determination of trade and product coverage threshold levels in respect of the "substantially all trade" requirement and the interpretation of the term "other restrictive regulations of commerce" (ORRCs) was also central in this regard. The proponents had also taken note of some of the interesting proposals submitted by Members, particularly those relating to transparency and notification; they were reflecting on them and paying specific attention to the recent proposal regarding examination of RTAs. It was hoped that Members would take the initial paper in the spirit in which it was presented, and that delegations would accept the path the proponents had chosen to follow, with respect to improving the proposal using concerns raised as essential building blocks. This notwithstanding, additional comments were welcomed, and the proponents stood ready to work with the Chairman and other delegations in support of the continuation of the Group's work.

5. Another representative from that same delegation provided preliminary answers to questions raised by delegations, to capture and clarify certain elements in the document submitted. Regarding questions on paragraph 11(ii) of the document, he explained that the aim was to point to the need to allow longer transitional periods for developing countries, where legitimately warranted. This could be achieved, *inter alia*, by explicitly clarifying the method of approach to determining "exceptional circumstances"; the reference to "not less than 18 years" should merely be considered to be indicative, given that the actual permissible length of the extended period would have to be determined through the negotiation process. The elements of that proposal would be refined further to ensure that there was a mechanism to allow for compatibility and transparency during the transition period. Regarding questions relating to the developmental aspects of the proposals, he said that the intention had been to adhere to paragraph 29 of the Doha Mandate which explicitly stated that "the negotiations shall take into account the developmental aspects of regional trading agreements". In reply to questions regarding the "Cotonou Partnership Agreement" (CPA) and regional Economic Partnership Agreements (EPAs) currently under negotiation between the ACP Group of States and the European Union (EU), he noted that these were still at a preliminary stage. Without prejudging their outcome, he provided an indication of their scope. First, the CPA was a broad-based co-operation agreement covering a diverse number of themes, including political dialogue, development co-operation and economic and trade relations; its major objective was to reduce and eradicate poverty, promote sustainable development and to support the gradual integration of the ACP countries into the world economy. Second, while the CPA in effect continued much of the co-operation relationship established under preceding Lomé Agreements, the new approach undertaken under the trade chapter provided for the conclusion of new trading arrangements between the ACP and the EU, which would be WTO compatible and progressively remove barriers to trade between them. This was a new step in their relations: while previous trade arrangements under Lomé consisted of non-reciprocal preferential market access for the ACP, the new arrangements, still in the process of being negotiated, would not require a WTO waiver and would be, as they were intended to be, WTO compatible. Third, Annex V of the CPA Trade Chapter provided for a time-bound continuation of the non-reciprocal preferential market access for ACP products until the new trading arrangements were in place; such access was under WTO waivers from Article 1.1 of the GATT 1994 in general,¹ and Article XIII.1-2 of the GATT 1994 for one particular product,² both of which were agreed to in Doha. Fourth, negotiations for the new trading arrangements began in 2002 and were expected to conclude in December 2007, entering into force in January 2008; in this respect, the waiver from Article 1.1 of the GATT 1994 would continue until December 2007. Fifth, the new arrangements would go beyond tariffs and goods to include also services and trade-related subjects such as intellectual property, technical barriers to trade and sanitary and phytosanitary measures. Finally, responding to a question

¹ See WT/MIN(01)/15.

² See WT/MIN(01)/16.

by another delegation regarding the relationship between Article XXIV of GATT 1994 and Article V of GATS, he stated that the proposal merely highlighted the degree of incongruence between these Articles: while the latter explicitly provided for S&D treatment for developing countries, such a philosophy was not contained in Article XXIV. Hence the parallel drawn in the proposal. He added that this aspect of the proposal would also be revisited in order to provide more clarity.

6. Some participants expressed sympathy for the idea of introducing greater flexibility for developed-developing country agreements within Article XXIV of the GATT 1994, so as to support the development and integration of developing countries into the multilateral trading system. It was however noted that while the negotiations were to take into account the developmental aspects of RTAs, any flexibility agreed upon would have to be well defined and targeted, and should not allow that agreements be outside the rules-based system. In particular, the need for respecting the requirements of paragraph 4 of Article XXIV of the GATT 1994 was stressed. The point was made that the clarification of rules resulting from the Doha Development Agenda should lead to rules providing for the maximisation of RTA benefits and minimization of its costs. One delegation expressed concern with the fact that the proposal appeared to provide for the consolidation, within the WTO system, of existing unilateral preferences.

7. Some participants noted that there was a need to explore the concept of "development-friendly" RTAs, e.g., by grasping which RTA characteristics would be positive for development. It was observed that it could not be assumed that the flexibility provided by the Enabling Clause was beneficiary to developing countries; and that Article XXIV of GATT 1994 might contain more appropriate criteria in that respect.

8. Participants also commented upon numerous specific issues. The point was made that it would not be acceptable that no obligations (including notification requirements) would apply during the transition period. A few participants noted that it would not be appropriate to provide for different transparency rules for developed-developing country agreements, and that technical assistance should be envisaged instead. Some participants also highlighted that recourse to dispute settlement should always be possible, irrespective of discussions and assessment made in the Committee on Regional Trade Agreements (CRTA). Questions were raised concerning the proposal regarding ORRCs in paragraph 11(i) of document TN/RL/W/155, which could give rise to ambiguity; in that respect, one participant questioned the assertion that rules of origin constituted an ORRC. Some participants highlighted the fact that the scope of the Enabling Clause was limited to goods, and that services agreements concluded among developing countries were subject to the disciplines of GATS Article V.

9. Regarding EPAs, some participants enquired whether the intention was that these agreements be compatible with existing WTO rules or whether the proposal sought new rules to ensure the compatibility of these agreements.

10. A co-sponsor of the proposal noted that the negotiation of legally-based, consistent and predictable rules on Article XXIV of the GATT 1994 for the benefit of developing countries constituted one of the Group's more substantive proposals on transparency, as the proponents could not depend on the sometimes arbitrary interpretation of Article XXIV to chart their development path. While the proposal needed further refining, he highlighted that its fundamental basis was the need to integrate meaningful S&D treatment within Article XXIV of the GATT 1994. There was a need to recognize the different levels of development and capacity of developing countries involved in developed-developing country RTAs; this should be consolidated in the rules, through, for example, longer transition periods, flexible interpretation of "substantially all trade" and rules of origin, and the preservation of the Enabling Clause for RTAs between developing countries. Finally, he highlighted the appropriateness of this Group as a forum for applying the concepts of the Doha Development Round and of a meaningful S&D treatment, through the recognition of the joint proposal's request for asymmetry for developed-developing country RTAs.

11. One participant argued that discussions related to S&D treatment should be held after the Group had been able to clarify WTO rules on RTAs.

12. Replying to the comments made, one co-sponsor noted that EPAs and WTO negotiations were being held in parallel, and that the former were only in a preliminary stage. In that sense, he cautioned against jumping into conclusions regarding the relationship between the proposal made and EPAs' compatibility with WTO rules. He stressed that the aim of the proponents was to create a framework that would foster development through RTAs. He reiterated that all questions and comments made by participants would be taken into account in the revision of the joint proposal, which would be of a more precise nature.

13. Regarding EPAs, a representative of a group of countries involved in this partnership confirmed that the aim was to have WTO compatible RTAs, and that it was premature to discuss the waiver issue at that point in time.

14. Following that discussion, the Group reverted into an informal mode. To guide the informal debate, the Group had at its disposal three informal papers, namely (i) the Chairman's *Roadmap for Discussions on RTAs "Systemic Issues – Rev.1*, with discussions focusing on RTAs coverage questions; (ii) a Secretariat's *Draft outline for a factual presentation on individual RTAs (Services)*; and (iii) a Secretariat's background note entitled *CRTA – Establishment and Functioning* (Job(04)/83). At the end of the informal discussions, the Group reverted back to formal mode.

C. OTHER BUSINESS

15. The Chairman announced that a room had been booked for the next Group's meeting on 22 July 2004. He requested that this date be retained in principle but that participants keep in mind that it might be changed depending on the overall progress of the negotiations.
