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SUBMISSION ON REGIONAL TRADE AGREEMENTS BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

The following communication, dated 5 July 2002, has been received from the Permanent Delegation of the European Communities.

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1. INTRODUCTION

The European Communities and their Member States welcome the inclusion within the DDA of negotiations to clarify and improve the disciplines and procedures applying to regional trade agreements (RTAs) under existing WTO provisions, while taking into account their developmental aspects. While negotiations should be based on the specific proposals introduced by WTO Members, their potential scope should encompass all WTO provisions dealing with RTAs, in particular Article XXIV of the GATT 1994, the relevant provisions of the Enabling Clause and Article V of the GATS.

2. THE WTO LEGAL FRAMEWORK: THE NEED FOR CLARIFICATION

There are a number of long-standing differences of interpretation associated with the GATT/WTO rules on regional trade agreements, and in particular Article XXIV of the GATT 1994. All RTAs notified to the GATT have been examined by working parties under the procedures foreseen in Article XXIV:7, while agreements notified to the WTO have been examined in the Committee on Regional Trade Agreements (CRTA). However, such have been the differences of view between GATT Contracting Parties and now WTO Members on the manner in which specific provisions should be interpreted that only in the very rarest cases has it been possible for a consensus to be established to consider a particular agreement in full conformity with GATT or WTO requirements. Negotiations undertaken in the Uruguay Round led to agreement on an Understanding on the Interpretation of Article XXIV of the GATT 1994. Although this instrument indeed provided useful clarification of certain aspects of Article XXIV rules, negotiators were by no means able to resolve all the outstanding differences of interpretation. This is evident from the inability to date of the CRTA to complete even a single examination among the agreements referred to it.

The WTO rules relevant for Economic Integration Agreements covering the area of trade in services are set out in Article V of the GATS. Even here, despite the fact that these rules were negotiated as recently as during the Uruguay Round and first enacted in the WTO Agreements which entered into force in 1995, the experience of examinations undertaken by the CRTA points to uncertainty among WTO Members as to how the provisions should be applied.

This situation is to the advantage of no one. Recent years have seen the conclusion of an increasing number of RTAs, yet the WTO Members who are party to them lack clear and authoritative guidance on how the relevant WTO rules should be applied. WTO Members who are not parties to a given RTA face the risk that agreements will have negative implications for their own legitimate trade

interests. Yet these same Members may also have RTAs of their own. The position of the European Communities is clearly in favour of clarification of the WTO rules for RTAs. In developing its views on this issue, the European Communities will be guided by three parameters: its interests in guaranteeing the proper functioning and continued good health of the open, rules-based multilateral trading system for the benefit of both developing and developed countries, its market access interests in respect of third country markets and its own regional agreements. Similar considerations could be expected to apply for all WTO Members - the clear majority - who are participants in some RTAs and not in others.

This approach has been the basis of the positions that the European Communities have already taken in the WTO Committee on Regional Trade Agreements on the issue of clarification of WTO rules relating to regional agreements.

At the same time, it is well known that the Committee on Regional Trade Agreements has not so far been able to complete even a single examination of the many RTAs that have been referred to it for examination. In part, this situation reflects differences of view adopted by individual WTO Members in that Committee in relation to the substantive nature of the relevant WTO obligations.

3. THE RELATIONSHIP BETWEEN REGIONALISM AND MULTILATERALISM

Given its own experience (the European Union has itself developed as the product of an ambitious process of deep and wide-ranging regional integration), its involvement in regional agreements with other countries and its strong support for multilateral liberalisation in the GATT/WTO, including most recently in the run-up to the launch of the DDA negotiations, the European Communities have always been persuaded that regional trade agreements must be “stepping stones” towards multilateral liberalisation, rather than “stumbling blocks” and that regionalism and multilateralism must be mutually supportive rather than contradictory. WTO rules recognise that RTAs, whether in the form of Customs Unions or FTAs in the area of trade in goods or in that of Economic Integration Agreements in the area of trade in services, can make a positive contribution to the development of trade. The European Communities believe that regional integration can provide an important contribution to stability and development and therefore supports the objective of sustaining and strengthening a properly functioning multilateral system in the long term.

The experience of the European Communities shows how regional agreements serve to open markets by pushing forward a pattern of tariff reduction and elimination in participating countries, thereby helping them prepare for further multilateral liberalisation. Regional agreements also provide the basis for much more far-reaching trade liberalisation, regulatory initiatives and elimination of non-tariff barriers to trade than have yet been possible within the WTO, enabling Members who are ready to “experiment” with such initiatives before there is an overall WTO consensus. The European Communities’ experience shows that the positive impact of regional integration is particularly strong in cases where regional agreements provide for “deep integration” in the sense of initiatives going beyond elimination of import and export tariffs and measures having equivalent effect to provide for elimination of non-tariff barriers to trade and for regulatory harmonisation and convergence, even to the extent, in some cases, of establishing common regulatory frameworks between RTA partners. Such more far-reaching economic integration within RTAs can also be of great benefit to non-parties, since it is often objectively difficult and economically meaningless to set up a bilateral or regional regulatory framework that still discriminates against non-parties to the RTA. Thus, consideration should be given as to how the WTO framework could serve to encourage and channel such more far-reaching integration and trade liberalisation. In this context, it will be important to try to ensure that regulatory aspects of “deep” regionalism are based, to the fullest extent possible, on multilateral norms.

4. THE DEVELOPMENT DIMENSION

The mandate for negotiations explicitly acknowledges the importance of the development dimension of regional agreements. The European Communities consider that regional integration can play an important role in supporting economic development through the creation of additional trade and investment opportunities as well as accompanying measures and initiatives to support structural and regulatory reforms. This is true both for RTAs between developing and developed countries and for those between developing countries. Regional agreements should also ensure that trade liberalisation at the regional level contributes to sustainable development.

RTAs involving developing countries are subject to existing WTO provisions such as Article XXIV of the GATT and Article V of the GATS, although for agreements in trade in goods between developing countries, the Enabling Clause is also relevant.

The European Communities are of the view that the DDA negotiations on RTAs should aim to clarify the flexibilities already provided for within the existing framework of WTO rules. This is likely to involve further consideration of the relationship between GATT Article XXIV and the Enabling Clause, as well as an examination of the extent to which WTO rules already take into account discrepancies in development levels between RTA parties.

The economic logic of regional integration indicates that all parties to such agreements should pursue a high level of reciprocal market opening and regulatory harmonisation or convergence while also pursuing an open approach to trade policy with third countries within the multilateral framework if they are to achieve the full potential benefits. This is as true for agreements among developing countries as it is for agreements between developing and developed countries or among developed countries alone. At the same time, it is important to recognise that the ability of many developing countries to adjust to greater competition on their domestic markets or take full advantage of additional market access opportunities can be constrained by their own individual level of development. This points to the need to examine, *inter alia*, the flexibilities available during the transitional or implementation period of RTAs, taking into account the needs of developing countries in a properly focused and appropriate manner so as to support their greater integration into the multilateral trading system. Aspects in respect of which such flexibilities might be appropriate include the length of the transitional period, the level of final trade coverage and the degree of asymmetry in terms of timetables for tariff reduction and elimination.

During the course of negotiations, the Negotiating Group on Rules should welcome input in an appropriate form from the WTO Committee on Trade and Development, to which the Doha Ministerial Declaration has allocated a specific role to monitor developmental aspects of the negotiations as a whole. The Negotiating Group should also be alert to the development of the work programme on Small Economies, which was also launched at Doha and which is to be undertaken under the auspices of the General Council. The Negotiating Group on Rules would have to remain, however, the forum for discussions and eventual decisions relating to this aspect of RTAs.

5. THE SCOPE OF NEGOTIATIONS

Apart from this horizontal aspect of the development dimension of RTAs, which is explicitly identified in the mandate for the negotiations on RTAs, the European Communities and their Member States are of the view that among the issues that merit discussion and analysis during the course of the negotiations are the following:

1. Clarification of the legal framework applicable to RTAs

Agreements in the area of trade in goods

Article XXIV of the GATT 1994 and the WTO Understanding on the Interpretation of Article XXIV of the GATT 1994

- the definitions of key concepts for the application of Article XXIV, including "regulations of commerce", "restrictive regulations of commerce", "substantially all the trade", "applicable duties" and "major sector";

- clarification of the application of provisions relating to the staged implementation of RTAs, including the "exceptional circumstances" in which transitional periods for the formation of a customs union or free trade area might be legitimately expected to exceed ten years;

- closer alignment of the disciplines imposed on parties to FTAs with the disciplines imposed on parties to Customs Unions, particularly in respect of the obligations of GATT Article XXIV:5 concerning the implications of individual RTAs for non-parties;

- treatment of non-tariff measures in trade between RTA partners including rules of origin;

The GATT Decision on Differential and more Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (the Enabling Clause)

- the relationship between the provisions of the Enabling Clause relating to regional and global agreements entered into amongst less-developed contracting parties and Article XXIV of the GATT 1994;

Agreements in the area of trade in Services

- clarification of key concepts for the application of Article V of the GATS, including "substantial sectoral coverage" and "substantially all discrimination";

- the definition of the "reasonable time frame" for the implementation of economic integration agreements;

- the appropriate combination of elimination of discriminatory measures (roll-back) and prohibition of new or more discriminatory measures (stand-still) in order to achieve the absence or elimination of substantially all discrimination (Article V:1(b)(i) and (ii));

- the appropriate methodology to ensure that the overall level of barriers and restrictions to trade in services with respect to third parties is not raised in the creation or enlargement of economic integration agreements;

2. Improvement of procedural aspects of the examination of RTAs in WTO bodies

- timing of notifications under relevant WTO provisions, the nature and form of information that should be supplied by RTA participants to support the examination of RTAs; timing of examination of notifications by the competent bodies;

- procedures for examination of agreements notified under the Enabling Clause.

It should be noted that this only represents an initial list of issues where the work undertaken in the CRTA points to a need for further examination now in the Negotiating Group. This is not an

exhaustive list of issues that the Negotiating Group can be expected to address. The European Communities expect other WTO Members to submit their own proposals on this, and indeed the European Communities should also be expected to come forward with further proposals and ideas as the negotiations progress.