WORLD TRADE ORGANIZATION

TN/RL/W/165
8 October 2004

(04-4222)

Negotiating Group on Rules Original: English

SUBMISSION ON REGIONAL TRADE AGREEMENTS

Paper by Japan

The following submission, dated 24 September 2004, is being circulated at the request of the Delegation of Japan.

JAPAN'S COMMENTS ON THE ACP PAPER TN/RL/W/155

I. GENERAL

The Doha Ministerial Declaration clearly states that our negotiations shall take into account the developmental aspects of regional trade agreements. Fully in line with this Declaration, Japan is cognizant of the importance development dimensions hold in the current round. In order for us to have productive and efficient use of our negotiation time in addressing the development dimensions, it only makes sense that we clarify and improve disciplines and procedures under the existing WTO provisions applying to regional trade agreements, as mandated by the Doha Ministerial Declaration, *before* plunging into discussions on Special and Differential (S&D) treatment elements.[1]

In other words, the benefit of considering the developmental aspects of regional trade agreements would improve if we first advance our discussion on substantive issues. In paragraph 10 of the ACP paper, ACP members suggest that *"Members agree that S&D treatment for developing countries be formally and explicitly made available to developing countries in meeting criteria set out in paragraphs 5 to 8 of GATT Article XXIV in the context of regional agreements entered into between developing and developed countries."* We duly note the political message of the ACP members contained in these paragraphs. However, we believe that the time is not yet ripe to engage in any discipline-specific discussions because we have yet to see the result of the work done in the Rules Negotiation Group for clarification of disciplines, e.g., on Article XXIV of GATT.

II. COMMENTS ON SUBSTANTIVE ELEMENTS CONTAINED IN THE PAPER

1. "Appropriate Flexibility"

At the Rules Negotiation meeting on RTA on June 29, one delegation stated that "substantially all the trade" requirement should have the least amount of flexibility because it is an

[1] In principle, when Japan negotiates RTAs with other countries, we consider those negotiating parties to be on equal footing, and there is little room for S&D treatment.

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exception to the general rule of the Most Favoured Nation treatment. Another delegation stated that it may be difficult for the Members who are currently engaged in the RTA negotiations to state their position in the discussion of the “substantially all the trade" requirement. The ACP paper stresses the need for “appropriate flexibility” for the "substantially all the trade" requirement (paragraph 11). It stands to reason, however, that in order for Members to engage in the discussion on “substantially all trade” and “appropriate flexibility” in any concrete manner, it is imperative that the reporting requirement should be more rigorously enforced so as to enable Members to grasp the full range of trade that takes place under RTAs among the WTO Members.

2. 18 Years for Transitional Period

We have already requested the ACP members for a response as to why 18 years is necessary, or even should be regarded as “indicative” for the transitional period. We are looking forward to further elaboration by the ACP on this point.

3. Notification

We would like to seek a clarification for the meaning of “streamlined, efficient and less onerous transparency and examination procedures” in paragraph 11 of the ACP paper. We consider that the notification should be done with maximum transparency regardless of whether the notifying Member is a developed or a developing country.

4. Dispute Settlement Implications

We would like to seek further clarification on the proposal related to the DSU. The DSU already contains a number of provisions incorporating S&D treatments (eg. Article 3.12, Article 4.10, Article 8.10, Article 12.10, Article 21.7, Article 21.8, Article 24, and Article 27.2). By virtue of the very nature of DSU being applicable not only to disputes between developed and developing Members, but also to those involving only developing Members, we need to exercise extreme caution when considering S&D treatments beyond the provisions currently in place. Furthermore, Article 1 of the DSU explicitly states that *the rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to the Understanding*. In this light, Japan cannot accept any proposal that would compromise the rights Members are entitled to under this provision. Is this proposal intended to create special or additional rules and procedures akin to those listed in Appendix 2? If this is the case, we believe that we must first address the clarification and improvement of the procedures and disciplines under the existing WTO provisions applying to regional trade agreements.

5. RTAs under Enabling Clause

Regarding the RTAs under the Enabling Clause, Japan believes that the parameters for tariff preferences under these RTAs should be well defined and targeted, and should not be outside the rules-based system, as was noted during the Rules Negotiation meeting on 29 June, 2004.